

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LORENZO VELA
(CRD No. 5108029),

Respondent.

Disciplinary Proceeding
No. 2008014409801

Hearing Officer – LBB

DEFAULT DECISION

June 8, 2009

Respondent is barred from association with any FINRA member in any capacity for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent is also barred for willful failure to update his Form U4 to disclose felony charges and his guilty plea to a felony charge, in violation of Conduct Rule 2110 and IM-1000-1.

Appearances

Jeremy Bloom, Senior Counsel, FINRA, New York, New York, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this proceeding on January 9, 2009, asserting two causes of action against Respondent Lorenzo Vela ("Respondent"). The first cause of action alleges that Respondent willfully failed to update his Uniform Application for Securities Industry Registration ("Form U4") to reflect that he had been charged with and convicted of a felony, thereby violating NASD Conduct Rule 2110 and IM-

1000-1. The second cause of action alleges that Respondent failed to respond to Rule 8210 requests for information, thereby violating NASD Procedural Rule 8210 and Conduct Rule 2110.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On April 7, 2009, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.¹

I. Respondent's Default

On January 8, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail at his most current residential address as listed in the Central Registration Depository ("CRD"). The Postal Service returned the mailing to the FINRA District Office marked "Unclaimed." Enforcement served the Complaint and Second Notice of Complaint on Respondent by certified mail at his CRD address February 9, 2009. The Second Notice was also returned marked "Unclaimed." Respond did not respond to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with NASD Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

II. Jurisdiction

Respondent was registered at FINRA member firm Farmers Financial Solutions, LLC ("Farmers") on August 1, 2006, and remained registered with that firm until July 30, 2008, when his employment was terminated. Pursuant to Article V, Section 4 of FINRA's By-Laws,

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its motion.

Respondent was subject to FINRA's jurisdiction at the time the Complaint was filed, and remains subject to FINRA's jurisdiction, because the Complaint was filed within two years after the termination of his registration with a member firm, and the Complaint charges him with violations that occurred while he was registered with a member firm and with failing to respond to requests for information within two years following the termination of his registration.

III. Origin of the Investigation

FINRA's investigation of Respondent began in August 2008, following the receipt of a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Farmers. The Form U5 disclosed that Respondent's employment had been terminated for "failure to timely disclose felony criminal charge and conviction."

IV. Violations

A. Respondent Violated Conduct Rule 2110 and IM-1000-1 by Failing to Disclose Material Facts on Form U4

Article V, Section 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." Applicants must complete a Form U4 disclosing, among other things, whether they have ever been charged with or convicted of any felony. FINRA uses the Form U4 "to monitor and determine the fitness of securities professionals." *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *34 (N.A.C. Feb. 12, 2007), citing *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996). A Form U4 that is inaccurate or incomplete so as to be misleading may be deemed conduct inconsistent with just and equitable principles of trade. See IM-1000-1; *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995).

Article V, Section 2(c) of FINRA's By-Laws requires that associated persons keep their Forms U4 "current at all times," and that they file amendments to Forms U4 "not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

On March 17, 2008, Respondent was charged with three felony counts of conspiracy to transport, move, attempt to transport, and attempt to move illegal aliens within the United States by means of a motor vehicle. Respondent pleaded guilty to one of those counts on April 18, 2008. Respondent did not notify Farmers or update his Form U4 with respect to either the felony charges or his guilty plea until July 25, 2008.² Respondent explained to a co-worker that he failed to disclose the felony charges and guilty plea because he was embarrassed, and he wanted to see if the situation would resolve itself on its own.

Question 14A(1)(b) of Form U4 asks if the applicant has ever been charged with a felony, and Question 14A(1)(a) asks if the applicant has ever "been convicted of or pled guilty ... to any felony." By failing to update his Form U4 within the time required by FINRA's By-Laws, Respondent violated Conduct Rule 2110 and IM-1001-1.

The Complaint alleges that Respondent's failure to disclose the felony charge was willful, and the facts support the allegation. 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."³ 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.⁴

² The United States District Court for the Southern District of Texas found Respondent guilty on July 28, 2008, sentencing him to time served, and placing him on supervisory release for two years, the first six months of which Respondent was subject to home confinement.

³ *Christopher LaPorte*, Exchange Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

⁴ *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *10 (N.A.C. Apr. 27, 2004); *Dep't of Enforcement v. Sarris*, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *11 (O.H.O. 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).

Respondent's failure to update the Form U4 to reflect information that was clearly required would have been sufficient for a finding of willfulness, and Respondent's admission to his co-worker that he failed to inform his firm of the felony charges and guilty plea because he was embarrassed confirms that the failure to update the form was willful.⁵

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose material facts on his Form U4.

B. Respondent Violated Procedural Rule 8210 by Failing to Respond to Requests for Information

NASD Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. The second cause of action of the Complaint alleges that on August 5, 2008, and September 10, 2008, pursuant to Rule 8210, FINRA's Member Regulation staff sent Respondent letters by first-class certified and regular mail to his CRD address, requesting information and documents concerning Respondent's failure to disclose the criminal matter to his firm. Neither letter was returned by the U.S. Postal Service. The return receipts for the certified mailings were returned to the staff, signed by Respondent's wife. Member Regulation staff sent a third request for information to Respondent's CRD address on October 10, 2008, by first-class certified and regular mail, again requesting information concerning the failure to disclose the criminal matter to the firm. The certified mailing was returned by the Postal Service marked, "Attempted – Not Known." The letter sent by regular first-class mail was not returned. Respondent did not respond to any of the requests.

⁵ Article III, Section 4 of FINRA's By-Laws provides that "[a] person is subject to a 'disqualification' ... if such person is subject to any 'statutory disqualification' as such term is defined in Section 3(a)(39) of the [Securities Exchange] Act [of 1934]."

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210. A violation of Rule 8210 is also a violation of Conduct Rule 2110. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

For failing to respond to requests for information, the FINRA Sanction Guidelines recommend a bar. *FINRA Sanction Guidelines* at 35. There is no evidence of any mitigating facts that would support a lesser sanction. The importance of the information requested is an aggravating factor. *See FINRA Sanction Guidelines* at 35. Information concerning the felony charge and guilty plea would be important in a determination of the Respondent's fitness as a member of this industry, especially since the guilty plea subjects Respondent to statutory disqualification pursuant to Exchange Act §3(a)(39)(F). A bar is the appropriate sanction for Respondent's failure to respond to requests for information, in violation of Rules 8210 and 2110.

For filing a false, misleading, or inaccurate Form U4, the FINRA Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension of five to 30 business days, or in egregious cases, a longer suspension or a bar. *FINRA Sanction Guidelines* at 73. Enforcement recommends a bar for the failure to update the Form U4, "[i]f Vela is not barred for the violations alleged in the Second Cause of Action, or if the Hearing Officer decides to impose a separate sanction for each violation." Because the violation was willful and Respondent's conviction would have resulted in statutory disqualification, a bar is the appropriate sanction.

VI. Conclusion

Respondent is barred from association with any FINRA member in any capacity for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule

2110. Respondent is also barred for failure to update his Form U4 to disclose a felony charge and his guilty plea to a felony charge, in violation of Conduct Rule 2110 and IM-1000-1.

The bars will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Lorenzo Vela (*via overnight courier and first-class mail*)
Jeremy Bloom, Esq. (*via email and first-class mail*)
David R. Sonnenberg, Esq. (*via email*)

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

Department of Enforcement,

COMPLAINANT,

V.

Lorenzo Vela
CRD No. 5108029,

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2008014409801

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. Respondent Lorenzo Vela ("Vela"), a registered person with Farmers Financial Solutions, LLC ("Farmers" or the "Firm"), failed to notify the Firm and willfully failed to update his Form U-4 in a timely manner after he was arrested and charged with a felony, to which he pled guilty. By virtue of this conduct, Vela violated NASD Rule 2110 and IM-1000-1. Vela also violated NASD Rules 8210 and 2110 by failing to respond to FINRA's requests for documents and information:

RESPONDENT & JURISDICTION

2. Vela entered the securities industry on or about February 28, 2006 when he associated with Farmers as a non-registered employee. Vela became registered with Farmers as a Series 63 on or about August 1, 2006. On or about August 23, 2006, he became registered with the Firm as a Series 6. Farmers terminated Vela's employment with the Firm on or about July

30, 2008. Since that time, Vela has not been associated with any member of FINRA. FINRA retains jurisdiction over Vela and his conduct pursuant to Article V, Section 4, of the FINRA By-Laws.

FIRST CAUSE OF ACTION

**Failure to observe high standards of commercial honor and
just and equitable principles of trade
(NASD Conduct Rule 2110 and IM-1000-1)**

3. Enforcement realleges and incorporates by reference paragraphs 1 and 2 above.

4. On March 17, 2008, while employed with Farmers, Vela was charged with three counts of conspiracy to transport, move, attempt to transport, and attempt to move illegal aliens within the United States by means of a motor vehicle, a felony. On April 18, 2008, Vela entered a guilty plea to one of those counts. On July 28, 2008, the United States District Court for the Southern District of Texas found Vela guilty, sentenced him to time served (four days, March 17-20, 2008), and placed him on supervisory release for two years beginning on July 28, 2008, the first six months of which he is subject to home confinement.

5. Article V, Section 2(c) of FINRA By-Laws requires a registered person to update his Form U-4 within 30 days after learning of any facts or circumstances which may cause any of his responses to any of the questions on the Form U-4 to become incomplete or inaccurate so as to be misleading. If such facts or circumstances involve a statutory disqualification, the amended U-4 must be filed not later than 10 days after such disqualification occurs.

6. Among the questions on the Form U-4 (rev. 10/2005), are the following:
"14A. (1) Have you ever: (a) been convicted or pled guilty or no lo contendere ("no contest") in a domestic, foreign, or military court to any felony? (b) been charged with any felony?"

7. When Vela was charged on or about March 17, 2008, and when he pleaded guilty to the felony count on or about April 18, 2008, he was required to update his Form U-4 to disclose the charges in response to Question 14A (1)(b) and the guilty plea in response to Question 14A (1)(a). By virtue of his being charged with, and pleading guilty to, a felony, on March 17 and April 18, 2008, respectively, Vela was on notice that his Form U-4 was no longer accurate and needed to be updated. Specifically, he was required to update his Form U-4 to disclose the charges in response to Question 14A (1)(b) and the guilty plea in response to Question 14A (1)(a).

8. Vela failed to notify Farmers or to otherwise update his Form U-4 until at least July 25, 2008.

9. On or about July 30, 2008, after it learned of the charges, the conviction, and Vela's failure to timely amend and update his Form U-4, the Firm terminated Vela's registration and his employment.

10. As a result of this conduct, Vela violated NASD Conduct Rule 2110 and IM-1000-1.

11. Vela's failure to update his Form U-4 was willful, and the information he failed to provide was material.

SECOND CAUSE OF ACTION

Failure to Cooperate

(Violations of NASD Rules 8210 and 2110)

12. Enforcement realleges and incorporates by reference paragraphs 1 through 11 above.

13. On August 5, 2008, as part of its preliminary investigation, FINRA's Member Regulation Department, sent Vela a request for information and documents relating to his failure

to disclose a criminal matter to the Firm, pursuant to Rule 8210. The request was sent via certified mail, return receipt requested, and regular first-class U.S. mail to Vela's current address as reflected in the Central Registration Depository ("CRD Address"). The signature card was signed by Vela's wife. The copy of the request sent by first class mail was not returned as undeliverable.

14. By letter dated September 10, 2008, FINRA's Member Regulation Department issued a second Rule 8210 request to Vela, requesting that he provide a response to the request letter dated August 5, 2008. This request also was sent via certified mail, return receipt requested, and regular first-class U.S. mail to an address identified through a database search for Vela's current address. This signature card also was signed by Vela's wife. The copy of the request sent by first class mail was not returned as undeliverable.

15. By letter dated October 10, 2008, Enforcement sent a Rule 8210 request to Vela asking him for information and documents relating to his failure to disclose a criminal matter to the Firm. This request was sent via certified mail, return receipt requested, and regular first-class U.S. mail to Vela's CRD Address.

16. The letter sent by certified mail was returned as "Attempted – Not Known" on November 10, 2008, but the letter sent by regular mail was not returned.

17. In a phone conversation with the Staff on November 12, 2008, Vela acknowledged receiving at least one of the three letters from FINRA.

18. To date, Vela has failed to respond to any of the three Rule 8210 requests sent to him.

19. By virtue of the above, Vela violated NASD Rules 8210 and 2110.

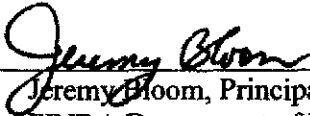
RELIEF REQUESTED

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; and
- C. make specific findings that Respondent's conduct alleged in the First Cause of Action was willful and the omitted information was both required and material.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: 1/8/09


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