

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DANA ANN DAVIS, aka, DANA PICKENS
(CRD No. 5639014)

Respondent.

Disciplinary Proceeding
No. 2009017292801

Hearing Officer – RSH

DEFAULT DECISION

December 21, 2010

The Respondent was barred for violating Procedural Rule 8210 and Conduct Rule 2010 by failing to respond in any manner to requests for information, and for violating Conduct Rule 2010 and IM-1000-1 by willfully failing to disclose felony charges on her Form U4.

Appearances

Paul M. Schindler, Director and Erin M. Kelly, Principal Counsel,
Washington, DC for the FINRA Department of Enforcement.

No appearance by or for Dana A. Davis.

DECISION

I. Introduction

The FINRA Department of Enforcement filed a Complaint in this proceeding on July 22, 2010. In its Complaint, Enforcement charged that the Respondent, Dana Ann Davis, violated Conduct Rule 2010, Membership and Registration Rule Interpretive Material ("IM") 1000-1, and Article V, Section 2 of FINRA's By-Laws by willfully failing to disclose felony charges on her Uniform Application for Securities Industry Registration or Transfer ("Form U4"). Enforcement also charged that Davis violated

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Procedural Rule 8210 and Conduct Rule 2010 by failing to respond to requests for information.¹

Davis did not answer or otherwise respond to the Complaint. Consequently, on October 19, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Affidavit of Paul M. Schindler and nine exhibits. Davis did not reply to the motion.²

II. Jurisdiction and Origin of the Complaint

A. Jurisdiction

Davis completed and signed a Form U4 on February 2, 2009, for FINRA member firm MetLife Securities, Inc. ("MetLife").³ MetLife filed the form on February 13, 2009.⁴ Although enrolled to take the Series 6 examination, Davis never became registered because MetLife discharged her on March 2, 2009, for failing to disclose required information on her Form U4. On March 6, 2009, MetLife filed a Uniform Termination Notice for Securities Industry Regulation ("Form U5") stating that it had terminated Davis's employment.⁵

Davis has not been associated with a FINRA member firm since March 6, 2009.⁶ Nevertheless, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws, because (1) FINRA requested information

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57.

² 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.

³ Complainant's Exhibit ("CX")-2, at 26.

⁴ CX-1, at 5; Schindler Declaration ("Schindler Decl.") ¶ 4.

⁵ CX-3; Schindler Decl. ¶ 5.

⁶ CX-1.

from Davis when it still retained jurisdiction over her, i.e., within two years following MetLife's filing of Davis's Form U5; and (2) the Complaint was filed within two years after Davis's failure to respond to FINRA's requests for information.⁷

B. Origin of the Complaint

The investigation leading to the filing of the Complaint began when FINRA received a Form U5 filed by MetLife stating that it had terminated Davis's employment because she had failed to disclose required information on her Form U4.⁸

III. Respondent's Default

On July 22, 2010, Enforcement sent the Complaint and Notice of Complaint to Davis by first-class certified mail (return receipt requested) to her residential address as recorded in the Central Registration Depository ("CRD Address"). The certified mailing was returned, marked "unclaimed."⁹ Davis did not respond to the Complaint by August 19, 2010, the date specified in the Notice.¹⁰

Accordingly, on August 26, 2010, Enforcement served Davis with the Complaint and Second Notice of Complaint, by first-class certified mail, to her CRD Address. The certified mailing was returned, marked "unclaimed."¹¹ Davis did not respond to the Complaint by September 13, 2010, the date specified in the Second Notice of Complaint.¹²

⁷ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁸ Schindler Decl. n.2.

⁹ Schindler Decl. ¶ 7; CX-4.

¹⁰ Schindler Decl. ¶ 9.

¹¹ Schindler Decl. ¶ 9; CX-6.

¹² Schindler Decl. ¶ 10.

After serving the Complaint and two notices, Enforcement learned that Davis had been sentenced in June 2010 to serve 24 months in prison as part of her guilty plea relating to the felony charges she failed to disclose on her Form U4. She was ordered to surrender to a federal prison in West Virginia on September 8, 2010.¹³ After learning that she had become incarcerated, Enforcement sent duplicate copies of the Complaint, Notice of Complaint and Second Notice of Complaint to Davis in prison. To date, Davis has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.¹⁴

Davis defaulted by failing to answer the Complaint.¹⁵ 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.

IV. Violations

A. Willful Failure to Disclose Felony Charges on Form U4

The Complaint alleges that Davis violated Conduct Rule 2010, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws by willfully failing to disclose a felony charge on her Form U4.

According to the Complaint, Davis was arrested in Houston, Texas on or about October 17, 2008. On or about October 22, 2008, she was charged by the United States Attorney's Office for the Southern District of Texas with two felonies—conspiracy and

¹³ Schindler Decl. ¶ 11; CX-7, CX-8.

¹⁴ Schindler Decl. ¶ 12; CX-9.

¹⁵ *Dep't. 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)).

wire fraud affecting a financial institution. On February 2, 2009, in connection with her employment at MetLife, Davis completed and signed a Form U4, which was sent to FINRA's CRD. Question 14A(1)(b) of Form U4 asked: "Have you ever: (a)...(b) been charged with a felony?" Davis falsely answered "no" to this question. By signing the Form U4, Davis confirmed that she had reviewed all of the information on the form and that it was complete and accurate. Nevertheless, Davis failed to disclose her felony charges. The Complaint charges that Davis's failure to do so was willful.

Conduct Rule 2010 and IM-1000-1 require associated persons to disclose accurately and fully information required in the Form U4 and to observe high standards of commercial honor and just and equitable principles of trade.¹⁶ The accuracy of an applicant's Form U4 "is critical to the effectiveness" of a self-regulatory organization's ability "to monitor and determine the fitness of securities professionals."¹⁷

The allegations in the Complaint are sufficient to establish, for purposes of this Default Decision, that Davis willfully failed to disclose information requested on her Form U4, as required by FINRA By-Laws. Accordingly, the Hearing Officer finds that Davis violated FINRA's By-Laws, NASD Conduct Rule 2010, and IM-1000-1.

B. Failure to Respond to Requests for Information

The Complaint alleges that Davis violated Procedural Rule 8210 and Conduct Rule 2010 by failing to respond to four written requests, made pursuant to Procedural

¹⁶ IM-1000-1 provides that the filing of registration information that "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" in violation of Rule 2110 (the predecessor of Rule 2010). See also *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995).

¹⁷ *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (citing *Alton*, 52 S.E.C. at 382); see also *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005) (recognizing that "the candor and forthrightness of applicants is critical to the effectiveness of the screening process").

Rule 8210, for information concerning her failure to disclose the two felony charges on the Form U4 filed on February 13, 2009.

According to the Complaint, on March 18, 2009, FINRA Staff sent the **first** request for information by first-class and certified mail to Davis at her CRD Address. The certified mailing was returned to FINRA marked “unclaimed.” The first-class mailing was not returned. Davis did not respond to the March 18 request.¹⁸

On July 14, 2009, FINRA Staff sent a **second** request for information to Davis at her CRD Address by first-class and certified mail. The return receipt for the certified mailing was returned to FINRA with Davis’s signature. Davis did not respond to the July 14 request.¹⁹

On September 25, 2009, FINRA Staff sent a **third** request for information to Davis at her CRD Address by first-class and certified mail. Neither the certified mailing nor the first class mailing was returned to FINRA. Davis did not respond to the September 25 request.²⁰

On November 16, 2009, FINRA Staff sent a **fourth** request for information to Davis at her CRD Address by first-class and certified mail. The certified mailing was returned to FINRA marked “unclaimed.” The first-class mailing was not returned. Davis did not respond to the November 16 request.²¹

¹⁸ Schindler Decl. ¶¶ 22, 27, 29a.

¹⁹ *Id.* ¶¶ 23, 27, 29b.

²⁰ *Id.* ¶¶ 24, 27, 29c.

²¹ *Id.* ¶¶ 25, 27, 29d.

Finally, the Complaint alleges that FINRA staff confirmed with Davis by telephone that she still resided at her CRD Address, and Davis acknowledged that she had received the third and fourth requests for information.²²

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this Default Decision, that Davis failed to respond in any manner to four requests for information, thereby violating Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.²³

V. Sanctions

A. Willful Failure to Disclose Felony Charges on Form U4

FINRA Sanction Guidelines (“Guidelines”) governing sanctions for false and misleading Forms U4 direct adjudicators to consider the nature and significance of the information at issue when determining sanctions.²⁴ The Guidelines direct 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.²⁵

Davis’s felony charge was material and would have been significant to broker dealers and investors. 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

²² *Id.* ¶ 26.

²³ *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *19, n.28 (July 1, 2008); *Anthony H. Barkate*, Exchange Act Rel. No. 49542, 2004 SEC LEXIS 806, at n.1 (Apr. 8, 2004); *Dep’t. of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

²⁴ FINRA Sanction Guidelines 73 (2007), www.finra.org/sanctionguidelines.

²⁵ *Id.* 73.

information available.”²⁶ 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.”²⁷ In this case, Davis had been charged with felonies related to a financial institution. The NAC has consistently held that criminal history is material.²⁸

Davis’s failure to disclose the felony charges was also willful. “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.”²⁹ A finding of willfulness does not require intent to violate the law or specific rule; it simply requires intent to commit the act that constitutes the violation.³⁰ The Form U4 that Davis signed, less than four months after having been charged with two felonies, clearly states that by signing the form she attested to the completeness and accuracy of the information contained in it. The Hearing Officer finds that Davis’s failure to disclose the felony charges on her Form U4 was willful. Therefore, Davis was subject to statutory disqualification.³¹

²⁶ *Dep’t. of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *14 (N.A.C. Apr. 27, 2004), (quoting *SEC v. Mayhew*, 121 F.3d 44, 52 (2d Cir. 1997)).

²⁷ *Id.* at *13.

²⁸ *Dep’t. of Enforcement v. Jason A. Craig*, 2007 FINRA Discip. LEXIS 16 (N.A.C. Dec. 27, 2007); *Dep’t. of Enforcement v. Knight*, 2004 NASD Discip. LEXIS 5.

²⁹ *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8, n.2 (Sep. 30, 1997).

³⁰ *Dep’t. of Enforcement v. Knight*, 2004 NASD Discip. LEXIS 5, at *10.

³¹ FINRA By-Laws, Article III, Sec. 4.

The record contains no evidence of mitigating factors. Accordingly, the Hearing Officer will bar Davis from associating with any FINRA member firm in any capacity for her failure to disclose her felony charges on her Form U4.

B. Failure to Respond to Requests for Information

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.³² When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.³³ For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.³⁴ Davis failed to respond in any manner to four requests for information. There is no evidence of any mitigating facts that would justify a sanction of less than a bar.

Accordingly, the Hearing Officer finds that Davis should be barred from associating with any FINRA member firm in any capacity for violating Procedural Rule 8210 and Conduct Rule 2010.

VI. Order

For failing to disclose two felony charges on her Form U4, in violation of Conduct Rule 2010, IM-1000-1 and Article V, Section 2 of FINRA's By-Laws, and for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010, Dana Ann Davis is barred from associating with any FINRA member firm in any capacity. The bars will become effective immediately if this Default

³² *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

³³ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

³⁴ Guidelines 35 (2007).

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: Dana A. Davis (*via first-class mail*)
Paul M. Schindler, Esq. (*via electronic and first-class mail*)
Erin M. Kelly, Esq. (*via electronic mail*)
David Sonnenberg, Esq. (*via electronic mail*)