

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

IRVING VINCENT BOBERSKI
(CRD No. 2583066),

Respondent.

Disciplinary Proceeding

No. 2009018217301

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 6, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for willfully failing to disclose material information on a Form U4, in violation of Conduct Rule 2110 and IM-1000-1; and for failing to respond to requests for information and documents, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Lynn M. Kaseta, Esq., and John M. D'Amico, Esq., appeared for the Department of Enforcement.

No appearance by or for Irving Vincent Boberski.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on November 3, 2010. The Complaint charges Respondent Irving Vincent Boberski ("Respondent") with: (1) willful failure to disclose material information on a Uniform Application for Securities Industry Registration or Transfer (Form U4), in violation of NASD Conduct Rule 2110 and NASD Membership and Registration Rule

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Interpretive Material (“IM”) 1000-1; and (2) failing to provide information and documents requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

II. Procedural History

On November 3, 2010, Enforcement served Respondent with copies of the Complaint and First Notice of Complaint by mailing them to him at his most recent residential address recorded in the Central Registration Depository (“CRD”) by first-class and certified mail, return receipt requested.² The United States Postal Service returned the certified mailing to Enforcement with a notation that the mailing was unclaimed. The regular first-class mailing was not returned.³ Respondent did not answer or otherwise respond to the Complaint.⁴

On December 2, 2010, Enforcement served Respondent with a Second Notice of Complaint by mailing it to him at his CRD address by first-class and certified mail, return receipt requested.⁵ The United States Postal Service returned the certified mailing to Enforcement with a notation that the mailing was unclaimed. The regular first-class mailing was not returned.⁶

¹ Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are those that existed on December 15, 2008. The conduct rules that apply are those that existed at the time of the conduct at issue.

² Kaseta Decl. ¶ 20.

³ *Id.* ¶ 22.

⁴ *Id.* ¶ 23.

⁵ *Id.* ¶ 24.

⁶ *Id.* ¶ 26.

Respondent did not file an Answer or otherwise respond to the Complaint by December 20, 2010, the deadline specified in the Second Notice of Complaint.⁷

On December 21, 2010, the Hearing Officer issued an order setting a deadline for Enforcement to file a motion for entry of a default decision because the Office of Hearing Officers had not received Respondent's Answer ("Default Order"). Thereafter, on January 11, 2011, the Office of Hearing Officers received a handwritten letter from Respondent. The letter did not address the allegations in the Complaint adequately or request a hearing, and the Hearing Officer could not determine if Respondent intended the letter to serve as his Answer. Accordingly, the Hearing Officer vacated the Default Order and ordered the parties to appear at a Pre-Hearing Conference on January 24, 2011.

Respondent did not appear for the Pre-Hearing Conference. Accordingly, the Hearing Officer issued an order finding Respondent in default and setting a new deadline for Enforcement to file a motion for entry of a default decision.

On February 18, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions. Enforcement's motion is supported by the declaration of Lynn M. Kaseta ("Kaseta Decl.") and three attached exhibits.⁸ Respondent did not respond to the motion.

Based on Respondent's default, the Hearing Officer granted Enforcement's motion and deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

⁷ Kaseta Decl. ¶¶ 25, 27.

⁸ Enforcement's exhibits are labeled CX-1 through CX-3.

III. Findings of Fact and Conclusions of Law

A. Background and Jurisdiction

Respondent was associated with UBS Financial Services, Inc. ("UBS") from August 13, 2007, until April 29, 2009, and registered with FINRA as a General Securities Representative from October 12, 2007, until May 26, 2009.⁹ UBS discharged Respondent on April 29, 2009, because he failed to disclose on his Form U4 that the Office of Thrift Supervision had issued a final order in 1992 that, among other things, prohibited him from engaging in any activities concerning a certain savings association or its affiliated persons.¹⁰ FINRA staff commenced the investigation that led to this proceeding after FINRA received the Uniform Termination Notice For Securities Industry Registration (Form U5) UBS filed on his behalf.¹¹

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after FINRA terminated Respondent's registration, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to Enforcement's requests for information made during the two-year period following the termination of his FINRA registration.¹²

B. Failure to Disclose Material Information on Form U4

1. Violation of Conduct Rule 2110 and IM-1000-1

IM-1000-1 requires FINRA members and their associated persons to file, in connection with membership or registration as a registered representative, complete and accurate

⁹ CX-1, at 2; Kaseta Decl. ¶ 6. The Hearing Officer took administrative notice of Respondent's CRD record, which reflects the correct date Respondent's FINRA registration terminated.

¹⁰ Kaseta Decl. ¶ 9.

¹¹ *Id.*

¹² 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").

information.¹³ This requirement applies to the Form U4, which FINRA and other self-regulatory organizations use to screen applicants and monitor their fitness for registration within the securities industry.¹⁴ Filing a misleading Form U4, or failing to timely amend a Form U4 when required, violates IM-1000-1 and the high standards of commercial honor and just and equitable principles of trade to which FINRA holds its members and their associated persons under NASD Rule 2110.¹⁵

The First Cause of Action alleges that, in October 2007, Respondent submitted a Form U4 to UBS, which did not disclose that a federal agency, the Office of Thrift Supervision, had entered an Order to Cease and Desist against him on July 31, 1992. The order prohibited Respondent from engaging in any activities concerning a certain savings association or its affiliated persons. In addition, the order required Respondent to pay \$300,000 in restitution and a civil penalty of \$225,000.¹⁶

At the time he submitted the Form U4 to register through UBS, Respondent answered “no” to Question 14D(2) although the only truthful response was “yes.” Question 14D(2) required that he disclose the final order entered by the Office of Thrift Supervision. Question 14D(2) asked,

Have you been subject to any *final order* of ... an appropriate *federal banking agency* ... that: (a) bars you from association with an entity regulated by such ...

¹³ IM-1000-1 states that membership or registration information “which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, 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 disciplinary action.”

¹⁴ *Jason A. Craig*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008).

¹⁵ NASD Rule 2110 states “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” NASD Rule 2110 applies with equal force to FINRA members and their associated persons. See NASD Rule 0115(a).

¹⁶ Compl. ¶¶ 6-7.

agency ..., or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities?

Based on the allegations in the Complaint, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 and IM-1000-1 by not disclosing the final order issued by the Office of Thrift Supervision.

C. Statutory Disqualification

A person is to be subject to a “statutory disqualification” under Article III, Section 4 of FINRA’s By-Laws and Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (“Exchange Act”) if, among other things, “such person ... has willfully made or caused to be made in any application ... to become associated with a member of, a self-regulatory organization, ... any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application ... any material fact which is required to be stated therein.” I find that Respondent acted “willfully” in failing to disclose “material” information on his Form U4. Respondent therefore is subject to a statutory disqualification.

1. Respondent Acted Willfully

A willful violation of the federal securities laws means merely “that the person charged with the duty knows what he is doing.”¹⁷ Thus, in a case such as this, “[a] willfulness finding is predicated on [a respondent’s] intent to commit the act that constitutes the violation — completing the Form U4 inaccurately.”¹⁸ Respondent need not have intended to violate FINRA rules to find that he acted willfully.¹⁹

¹⁷ *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

¹⁸ *Department of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at *14 (N.A.C. May 3, 2005).

¹⁹ *See Wonsover*, 205 F.3d at 414.

In this case, the circumstantial evidence is sufficient to establish that Respondent acted willfully. Respondent was subject to significant sanctions by the Office of Thrift Supervision.²⁰ “There is no credible evidence to suggest that [Respondent’s] inaccurate and misleading negative answers to the question[] on the Form U4 [was] accidental or otherwise unintended.”²¹

2. The Omitted Information was Material

“Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [FINRA presumes] that essentially all the information that is reportable on the Form U4 is material.”²² In addition, FINRA must depend on its members to report to it accurately and clearly in a manner that is not misleading because it “cannot investigate the veracity of every detail in each document filed with it.”²³

“The test for materiality is whether the omitted information would have ‘significantly altered the total mix of information made available.’”²⁴ The Office of Thrift Supervision’s actions in barring Respondent from associating with a savings association and ordering that he pay \$300,000 in restitution is information that “most certainly would have significantly altered the landscape of information available to FINRA, other regulators, broker-dealers, and investors.”²⁵

²⁰ See *Robert Thomas Clawson*, Exchange Act Rel. No. 48143, 2003 SEC LEXIS 1598, at *15 & n.19 (July 9, 2003) (circumstantial evidence can be “more than sufficient” to establish that a registered representative acted willfully in violation of the antifraud provisions of the Exchange Act).

²¹ *Department of Enforcement v. Neaton*, No. 2007009082902, 2011 FINRA Discip. LEXIS 1, at *20 (N.A.C. Jan. 7, 2011).

²² *Department of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (N.A.C. Apr. 27, 2004).

²³ *Robert E. Kauffman*, Exchange Act Rel. No. 33219, 1993 SEC LEXIS 3163, at *2 (Nov. 18, 1993).

²⁴ *Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *29 (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

²⁵ *Neaton*, 2011 FINRA Discip. LEXIS 1, at *22

D. Failure to Provide Information and Documents

The Second Cause of Action alleges that Respondent failed to respond to requests for information and documents FINRA staff sent to him pursuant to FINRA Rule 8210 in connection with FINRA's investigation into the reason UBS discharged him. FINRA staff sent the first request to Respondent at his CRD address on July 22, 2009, by first-class and certified mail, return receipt requested. The United States Postal Service returned the certified mailing with a notation that it was unclaimed. The regular first-class mailing was not returned. Respondent did not respond to the first request.²⁶

On August 12, 2009, FINRA staff sent a second request for information and documents to Respondent at his CRD address by first-class and certified mail, return receipt requested. Again, the United States Postal Service returned the certified mailing with the notation that it was unclaimed. The United States Postal Service did not return the first-class mailing. Respondent did not respond to the second request for information.²⁷

The facts alleged in the Second Cause of Action establish that Respondent violated FINRA Rules 8210 and 2010 by failing to respond to the staff's requests for information.

IV. Sanctions

A. Failure to Disclose Material Information on Form U4

The FINRA Sanction Guidelines ("Sanction Guidelines") for filing a false, misleading, or inaccurate Form U4 recommend a fine of between \$2,500 to \$50,000 and a suspension of 5 to 30 business days.²⁸ In egregious cases, such as those involving a false, inaccurate, or misleading

²⁶ Compl. ¶¶ 12-16.

²⁷ *Id.* ¶¶ 17-20.

²⁸ FINRA Sanction Guidelines 71 (2011), www.finra.org/sanctionguidelines.

filing, the Sanction Guidelines recommend consideration of a longer suspension of up to two years or a bar.²⁹

The Hearing Officer finds that this is an egregious case and that a bar is the warranted sanction. In evaluating the appropriate sanctions to impose, the Sanction Guidelines provide three “principal” considerations specific to Form U4 violations, only one of which — the nature and significance of the information at issue — is relevant here.³⁰ These considerations are in addition to the principal considerations contained within the Sanction Guidelines that apply in every disciplinary case.³¹

The information Respondent failed to disclose when he applied for registration through UBS was significant and concerned serious misconduct reflecting dishonesty. Enforcement represents that the administrative proceeding brought by the Office of Thrift Supervision charged Respondent with dishonesty, diversion, dissipation or waste of bank assets and with making false and misleading statements to the Office of Thrift Supervision.³² Respondent’s failure to disclose this information calls into question his fitness for employment in the securities industry. Accordingly, the Hearing Officer bars Respondent from associating with any FINRA registered firm in any capacity.

B. Failure to Respond to Requests for Information

For failing to respond to FINRA Rule 8210 requests for information, the Sanction Guidelines provide that a bar should be “standard” when there is a complete failure to respond.³³

²⁹ *Id.* at 72.

³⁰ Sanction Guidelines 71.

³¹ *See Id.* at 6-7.

³² Enforcement’s Mot. at 3.

³³ Sanction Guidelines 33.

The Sanction Guidelines direct adjudicators to consider the “[i]mportance of the information requested as viewed from FINRA’s perspective” in assessing appropriate sanctions.³⁴

The Hearing Officer finds that a bar from associating with any FINRA registered firm in any capacity is the appropriately remedial sanction for this misconduct. There are no mitigating factors in the record that would warrant a lesser sanction. Accordingly, the Hearing Officer will bar Respondent from associating with any FINRA registered firm in any capacity for this violation as well.

V. Order

Irving Vincent Boberski is barred from associating with any FINRA registered firm in any capacity for willfully failing to disclose material information on his Form U4, in violation of NASD Conduct Rule 2110 and IM-1000-1, as alleged in the First Cause of Action; and for failing to respond to requests for information and documents, in violation of Procedural Rule 8210 and Conduct Rule 2010, as alleged in the Second Cause of Action. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

In addition, because Respondent’s violation was willful, the Hearing Officer finds that he is subject to a statutory disqualification.

A handwritten signature in black ink, appearing to read 'Andrew H. Perkins', is written over a horizontal line.

Andrew H. Perkins
Hearing Officer

³⁴ Sanction Guidelines 33.

Copies to:

Irving Vincent Boberski (*via overnight courier and first-class mail*)

Lynn M. Kaseta, Esq. (*via electronic and first-class mail*)

John M. D'Amico, 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.

Irving Vincent Boberski,
(CRD No. 2583066),

Respondent.

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DISCIPLINARY PROCEEDING
No. 2009018217301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Irving Vincent Boberski (Boberski) willfully failed to disclose a material fact on a Form U4, and he failed to respond to FINRA staff's requests for information. This conduct violated NASD Conduct Rule 2110, IM-1000-1 and FINRA Rules 8210 and 2010.¹

RESPONDENT AND JURISDICTION

2. On July 12, 2004, Boberski first became registered with FINRA as a General Securities Representative.

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). Following the consolidation, FINRA began developing a new consolidated rulebook, the first phase of which became effective on December 15, 2008. This complaint, however, refers to and alleges allegation of NASD Conduct Rules that were in effect at the time of Boberski's misconduct discussed in the First Cause of Action.

3. From October 12, 2007 to April 29, 2009, Boberski was registered in that capacity through member firm UBS Financial Services, Inc.
4. Although Respondent has not been associated with a FINRA member firm since April 29, 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION

Willful Failure to Disclose Material Information on a Form U4 (NASD Conduct Rule 2110 and IM-1000-1)

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. On July 31, 1992, the Office of Thrift Supervision (OTS) issued an Order to Cease and Desist (OTCD) against Boberski which, among other things, prohibited Boberski from engaging in any activities concerning a certain savings association or its affiliated persons. In connection therewith, Boberski was required to pay \$300,000 in restitution to such savings association. He was also required to pay a civil money penalty assessment of \$225,000 to the OTS.
7. On October 12, 2007, Boberski submitted or caused to be submitted an initial Form U4 through a member firm that included Question 14D(2), which asked: "Have you been subject to any *final order* of ... an appropriate *federal banking agency* ... that:

(a) bars you from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities[?]"

8. Boberski answered "no" to Question 14D(2), which was a false answer.
9. Specifically, Boberski willfully failed to disclose the material fact that the OTCD had been issued against him.
10. Thereafter, Boberski willfully failed to amend his Form U4 to disclose the OTCD.
11. By failing to disclose a material fact on his Form U4, Boberski violated NASD Conduct Rule 2110 and IM-1000-1.

SECOND CAUSE OF ACTION

Failure to Respond to Requests for Information (FINRA Rules 8210 and 2010)

12. The Department realleges and incorporates by reference paragraphs 1-11 above.
13. On July 22, 2009 and pursuant to FINRA Rule 8210, FINRA staff sent a letter to Boberski at his last known residential address as reflected in the records of FINRA's Central Registration Depository: 1374 Stone Creek Lane, Charlottesville, VA 22902 (CRD Address). The letter requested that Boberski provide information and documents concerning his failure to disclose the OTCD on his Form U4. The letter, which requested a response by August 5, 2009, was sent via first-class and certified mail.
14. The certified mail envelope was returned by the Postal Service to the Woodbridge District Office marked "RETURN TO SENDER," "UNCLAIMED," and "UNABLE TO FORWARD."

15. The first-class envelope was not returned to staff.
16. Boberski failed to respond to FINRA staff's request for information.
17. On August 12, 2009 and pursuant to FINRA Rule 8210, FINRA staff sent a second letter to Boberski at his CRD Address requesting him to provide the same information by August 26, 2009. The letter was sent by first-class and certified mail and advised Boberski that if he failed to respond, he might be subject to disciplinary action.
18. The certified mail envelope was returned by the Postal Service to the Woodbridge District Office marked "RETURN TO SENDER," "UNCLAIMED," and "UNABLE TO FORWARD."
19. The first-class envelope was not returned to staff.
20. Boberski failed to respond to the staff's request for information.
21. The staff is not aware of any more current residential or business addresses for Boberski.
22. By failing to respond to FINRA staff's requests for information, Boberski violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

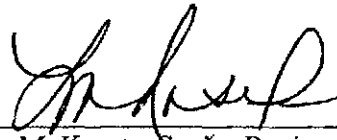
WHEREFORE, the Department respectfully requests that the Panel:

- 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; and

- 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: November 3, 2010



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