

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOVANY JOSEFY LIND
(CRD No. 5211913),

Respondent.

Disciplinary Proceeding
No. 2009020589801

Hearing Officer—LOM

DEFAULT DECISION

December 12, 2011

Respondent: (i) willfully failed to disclose on his Form U4 that he was the subject of a pending felony charge, in violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010; and (ii) repeatedly failed to respond to requests for information in connection with FINRA's investigation of the circumstances of his termination by his FINRA member firm, in violation of FINRA Rules 8210 and 2010. The first violation was egregious and warrants a 30-business-day suspension. The second violation warrants a bar from association with any FINRA registered firm in any capacity. The bar is imposed but the suspension is not. As a consequence of the finding that the first violation was willful, however, Respondent also is statutorily disqualified from association with a broker-dealer in the future.

Appearances

Christina J. Kang, Senior Regional Counsel, and David Jaffe, Regional Chief Counsel, New York, New York, for the Department of Enforcement.

No appearance on behalf of Jovany Josefy Lind.

I. Introduction And Origin Of Complaint

The Respondent, Jovany Josefy Lind, was registered with FINRA from April 2006 until September 2008 through association with FINRA member firm E1 Asset Management, Inc.

(“E1” or the “Firm”) as a General Securities Representative.¹ E1 terminated Lind in September 2008 for his “failure to show up for work.”² About a year later, E1 rehired Lind and allowed him to register again with FINRA in October of 2009.³ The Firm then discharged him on October 23, 2009, for “lack of attendance” and his registration with FINRA was terminated on November 17, 2009.⁴ Lind has not been registered with FINRA since that time.⁵

After receiving notice of Lind’s fall 2009 termination, FINRA staff investigated to determine whether Lind had violated any FINRA Rules or securities laws.⁶ Lind’s Firm provided documents and information.⁷ When FINRA’s Department of Enforcement (“Enforcement”) sought information from Respondent pursuant to FINRA Rule 8210, however, Respondent did not respond – even though Enforcement served him with Rule 8210 inquiries five separate times.⁸

According to the Default Motion and the Complaint, and as reflected in an exhibit attached to the Default Motion, Lind was alleged to have stolen various items with a value over \$1000 from an electronics store on or about November 1, 2008, and on or about May 29, 2009, he was charged with a felony (Grand Larceny in the Fourth Degree).⁹ Ultimately, in March

¹ The Default Motion is supported by a Declaration given by FINRA attorney Christina J. Kang (“Kang Decl.”) and twenty-one exhibits marked CX-1 through CX-21. The facts set forth herein are based on that evidence, which is not in dispute, and the allegations of the Complaint, which, as discussed below, are deemed admitted as a result of Lind’s default.

² CX-1.

³ CX-1.

⁴ CX-1.

⁵ Kang Decl. ¶ 7; CX-1.

⁶ Kang Decl. ¶¶ 8-9.

⁷ Kang Decl. ¶ 9.

⁸ Kang Decl. ¶ 9; CX-11, CX-13, CX-15, CX-18, CX-20.

⁹ Default Motion at p. 4; CX-9; Compl. ¶ 5.

2010, Lind resolved the charge by pleading guilty to a violation of disorderly conduct.¹⁰

However, when Lind became reemployed with E1 in September 2009, he signed a Form U4 that answered “no” to the question whether he had “ever” been “*charged*” (emphasis added) with “any felony.”¹¹ In fact, at the time he signed the Form U4 the felony charge was pending.

Enforcement determined to charge Respondent with willful failure to disclose material information on his Form U4 – *i.e.*, that he had been charged with a felony – and with failure to provide information in violation of FINRA Rule 8210.¹² It filed the attached Complaint with the Office of Hearing Officers on June 8, 2011, and served the Complaint, along with the appropriate Notice of Complaint, three times (in June, July, and August).¹³ The Return Receipt for the first service was returned bearing the signature “Jovany Lind”¹⁴ and, in a subsequent telephone conversation with Enforcement counsel, Respondent confirmed receiving the First Notice of Complaint.¹⁵ Nevertheless, Lind failed to respond.¹⁶

Accordingly, Enforcement filed and served a Motion for Entry of Default Decision and Imposition Of Sanctions (“Default Motion”) dated October 13, 2011, which is based on the Respondent’s failure to file an Answer or otherwise respond to the charges against him. The Office of Hearing Officers has received no response to the Default Motion from Respondent.

¹⁰ Default Motion at p.4; Compl. ¶ 6.

¹¹ CX-10.

¹² Kang Decl. ¶ 9.

The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. 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 FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue.

¹³ Kang Decl. ¶¶ 10-23; CX-2 through CX-8.

¹⁴ Kang Decl. ¶12; CX-3.

¹⁵ Kang Decl. ¶ 18.

¹⁶ Kang Decl. ¶ 23.

For the reasons set forth below and pursuant to authority granted by FINRA Rule 9269(a), the Hearing Officer finds Lind in default, grants Enforcement's Default Motion, and deems the allegations against Respondent admitted. On that basis, the Hearing Officer issues this Decision barring Lind from associating with any FINRA member firm in any capacity.

II. Procedural History And Grant Of Default Motion

On June 8, 2011, Enforcement served a copy of the Complaint and the First Notice of Complaint on Lind by first-class mail and certified mail, return receipt requested, both addressed to Lind at his address recorded in the Central Registration Depository ("CRD").¹⁷ The CRD records did not show that Lind was employed by or affiliated with any FINRA member firm,¹⁸ so no business address was available as an alternative to the residential address listed on the CRD.

The certified mail return receipt was returned to FINRA staff bearing the signature "Jovany Lind."¹⁹ The copy sent by first class mail was not returned to the staff.²⁰

The First Notice informed Lind that he was required to file and serve his Answer on or before July 11, 2011.²¹ However, Lind filed no Answer with the Office of Hearing Officers by that date, and Enforcement received no responsive pleading.²²

On July 14, 2011, Enforcement served the Complaint and a Second Notice of Complaint on Lind by first-class mail and certified mail, return receipt requested, both addressed to his CRD address.²³ The Second Notice specified that the Answer was due on or before August 1,

¹⁷ Kang Decl. ¶ 10; CX-2.

¹⁸ Kang Decl. ¶ 11; CX-1.

¹⁹ Kang Decl. ¶ 12; CX 3.

²⁰ Kang Decl. ¶ 12.

²¹ CX-2.

²² Kang Decl. ¶ 13.

²³ Kang Decl. ¶¶ 14-17; CX-4.

2011, and warned that a failure to submit an Answer could result in a default decision against Lind pursuant to FINRA Rule 9269.²⁴ The staff received the certified mail return receipt marked “Return to Sender,” “Unclaimed,” and “Unable to Forward.”²⁵ The copy sent by first-class mail was not returned to the staff.²⁶ Lind did not file an Answer with the Office of Hearing Officers by the due date, and the staff received no responsive pleading.²⁷

On August 23, 2011, the staff determined to send another copy of the Complaint and a Third Notice of Complaint to Lind and to move for additional time to file a default motion.²⁸ The staff determined to send the Third Notice to the CRD address and to the CRD address “Plus,” which was the CRD address plus a notation for the specific apartment (“GA”).²⁹ In that context, Kang contacted Lind by telephone.³⁰ In that telephone conversation Lind “confirmed that he had, in fact, received the First Notice. In addition, Lind re-confirmed that his correct address was the CRD address Plus.”³¹

On August 24, 2011, the staff served the Complaint and Third Notice to the CRD address and the CRD Plus address by first-class mail and certified mail, return receipt requested.³² The Third Notice instructed Lind to answer the Complaint no later than September 12, 2011.³³ Each of the copies sent by certified mail was returned marked “Unclaimed”; the copies sent by first-

²⁴ Kang Decl. ¶ 17; CX-4.

²⁵ Kang Decl. ¶ 16; CX-5.

²⁶ Kang Decl. ¶ 16.

²⁷ Kang Decl. ¶ 17.

²⁸ Kang Decl. ¶ 18.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Kang Decl. ¶ 19; CX-6.

³³ CX-6.

class mail were not returned.³⁴ Lind did not file an Answer with the Office of Hearing Officers by the due date, and the staff received no responsive pleading.³⁵

Under FINRA Rule 9134, service of a complaint is valid if sent to an individual respondent by certified mail at the person's most recent residential address in the CRD, unless the staff has actual knowledge that the CRD address is outdated. Alternatively, a complaint may be served on an individual at the CRD address of an entity employing the person.

Under the Rule, FINRA staff effected valid service. When it initiated the proceeding, the staff had no indication that Lind's CRD address was outdated. To the contrary, Lind's CRD records indicate that he had been at the same address since 1988.³⁶ Because Lind was no longer employed in the securities industry at a firm where service could be made on an entity CRD address, the staff had no alternative business address. The staff had every reason to believe that the First Notice was validly served, both because the appropriate steps were taken and because later events confirmed valid service. The First Notice appeared to have been received by Lind at his CRD address because the return receipt bore his signature. Lind also later confirmed that he received the First Notice in a telephone call with staff. Even ignoring the validity of service of the First Notice, however, there is no question that the staff effected proper service when it served a Third Notice using a more detailed address, CRD Plus, that Lind confirmed was his current address.

Despite valid service, Lind has failed to file an Answer or other responsive pleading with the Office of Hearing Officers. Pursuant to FINRA Rules 9215(f) and 9269(a) and based on Lind's default, the Hearing Officer deems the allegations in the attached Complaint admitted.

³⁴ Kang Decl. ¶ 21; CX-7, CX-8.

³⁵ Kang Decl. ¶¶ 22-23.

³⁶ CX-1 (Item 2, Personal Residential History); CX-10 (Item 11, Residential History).

III. Findings Of Fact And Conclusions Of Law As To Underlying Violations

A. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed on June 8, 2011, within two years after termination of Lind's registration with a FINRA member firm on November 17, 2009,³⁷ and the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm – the failure to disclose the pending felony charge on his Form U4. Also, Lind failed to respond to requests for information pursuant to FINRA Rule 8210 that were sent within two years of the termination of his registration, while he was still obligated to respond.

B. Respondent's Failure To Disclose Pending Felony Charge On Form U4 In Violation Of FINRA By-Laws And FINRA Rules 1122 and 2010

On or about May 29, 2009, Lind was charged in Criminal Court in New York County with a felony, Grand Larceny in the Fourth Degree.³⁸ He was accused of stealing property valued at \$1,387.13 from Best Buy.³⁹

On September 18, 2009, in connection with his reemployment with E1, Lind signed a Form U4 that E1 then submitted to FINRA's CRD on his behalf on October 6, 2009.⁴⁰ Question 14A on the Form U4 asks: "Have you ever ... (b) been charged with any felony?"⁴¹ Lind signed the Form U4 with the box checked "no" in answer to that question.⁴²

Lind's answer to the felony charge question was false. Lind had been charged with a felony.

³⁷ Kang Decl. ¶ 6; CX-1; Compl. ¶¶ 3-4.

³⁸ Compl. ¶ 5.

³⁹ *Id.*

⁴⁰ Compl. ¶ 8; CX-10.

⁴¹ Compl. ¶ 9; CX-10.

⁴² Compl. ¶ 10; CX-10.

Lind's answer also was a willful failure to disclose. Without a doubt, Lind knew that the felony charge was pending and knew that the Form U4 clearly demanded disclosure of the felony charge. Nevertheless, he failed to disclose the felony charge. This conduct meets the standard for willfulness in this context.⁴³

Lind's falsehood was material. A person's criminal history bears directly on whether that person is fit to enter the securities industry and to be entrusted with customer assets and confidence. Furthermore, the Form U4 is the gateway to the securities industry and constitutes a critical tool for evaluating the fitness of individuals seeking entry to the securities industry. FINRA regulation and FINRA member firm oversight of associated persons both depend on the truth and accuracy of information in the Form U4.⁴⁴

The Hearing Officer finds that Lind's failure to truthfully disclose the felony charge against him, as the Form U4 clearly required, was a violation of Article V, Section 2 of FINRA's By-Laws. Article V requires applicants for registration with FINRA to fully and accurately disclose information required by the Form U4.

The Hearing Officer finds that Lind's failure to disclose the felony charge also violated FINRA Rule 1122, which states, "No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof." By failing to disclose the felony charge Lind created a misleading picture of his criminal history and his trustworthiness.

⁴³ See *Christopher LaPorte*, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997) (in applying the term "willful" in the context of administrative proceedings, the Commission evaluates "whether the respondent knew or reasonably should have known under the particular facts and circumstances that his conduct was improper").

⁴⁴ Compl. ¶ 12. See *Rosario R. Ruggiero*, 52 S.E.C. 725, 1996 SEC LEXIS 990, at *8 (Apr. 5, 1996) (The Form U4 is a "vital screening device."); *Dep't of Enforcement v. Prewitt*, 1998 NASD Discip. LEXIS 37, at *8 (Aug. 17, 1998) (The Form U4 is relied upon by "all the self-regulatory organizations, including the NASD, state regulators, and broker-dealers to monitor and determine the fitness of securities professionals.").

In addition, the Hearing Officer finds that Lind's failure to disclose the felony charge violated FINRA Rule 2010, which states, "A member in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." The willful submission of a false statement in a U4 is the antithesis of "high standards of commercial honor."

C. Respondent's Failure To Respond To FINRA Rule 8210 Inquiries In Violation Of That Rule And FINRA Rule 2010

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210, FINRA may require an associated person "to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation" in connection with any investigation. The Rule is crucial to FINRA's ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.⁴⁵

In this case, FINRA staff requested information from Lind pursuant to Rule 8210 five separate times, but Lind made no response whatsoever. FINRA staff sent Lind the first request by letter dated December 2009, addressed to Lind's CRD address and sent by both first class and certified mail. After receiving no response, in January 2010 the staff sent a second request to Lind's CRD Address Plus (as noted above, this is the same address as Lind's CRD address but

⁴⁵ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD [FINRA's predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *Joseph G. Chiulli*, 54 S.E.C. 515, 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). See also *Morton Bruce Erenstein*, 2007 SEC LEXIS 2596, at *13 (Nov. 8, 2007); *Robert Fitzpatrick*, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at *11-12 (Oct. 19, 2001).

with additional information specifying his apartment). The return receipt for the copy sent by certified mail was signed “Jovany Lind.” However, Lind did not respond to the second request. FINRA staff then sent a third in February 2010. In February 2011, FINRA staff sent a fourth request that included the prior three requests. The staff had found slightly varying designations for Lind’s apartment in a public records search, so the staff sent the fourth request to five addresses: Lind’s CRD address, the CRD Plus address, and three others with varying apartment designations. All five addresses were at [REDACTED] All five certified mail receipts were returned bearing the signature “Jovany Lind.” Still, Lind did not respond. In early March 2011, FINRA staff left detailed voicemail messages on Lind’s home telephone and cell phone notifying him that he was required to respond to the previous requests. Shortly thereafter, by letter dated March 8, 2011, FINRA staff sent a fifth request to the five addresses it had for Lind. All five of the certified mail receipts were returned bearing the signature “Jovany Lind.” Lind continued not to respond.

The Hearing Officer finds that the evidence is overwhelming that Lind purposely refused to provide information and violated FINRA Rule 8210. The record also demonstrates that his recalcitrance imposed a substantial and unnecessary burden on FINRA in its efforts to conduct the investigation.

In addition, the Hearing Officer finds that the evidence supports a finding that Lind violated FINRA Rule 2010. As discussed above, FINRA Rule 2110 requires the observance of “high standards of commercial honor and just and equitable principles of trade.” It is well-established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.⁴⁶

⁴⁶ See *CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at 22 (July 20, 1999).

IV. Sanctions

Pursuant to the FINRA Sanction Guidelines (“Sanction Guidelines”),⁴⁷ the Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given the facts and circumstances of this case. Lind’s misconduct – first by lying on his Form U4, and then by repeatedly refusing to provide information sought by FINRA in its investigation of his conduct at his FINRA member firm – goes to the heart of the self-regulatory process. FINRA simply cannot perform its oversight function effectively if associated persons fail to make truthful and complete disclosures on the Form used to screen the integrity and trustworthiness of those who seek to participate in the securities industry, or if associated persons refuse to provide information FINRA seeks in order to investigate potential misconduct.

As explained in the General Principles applicable to all FINRA sanctions, the overall purpose of the FINRA disciplinary process and FINRA sanctions is to deter the respondent and others from engaging in misconduct and to protect investors.⁴⁸ A principle consideration in determining the appropriate sanction for an individual is whether that person attempted to deceive his or her employer firm.⁴⁹ Another principle consideration is whether the person engaged in an intentional act (as opposed to a reckless or negligent act).⁵⁰ Both of these considerations point to a more severe sanction in this case. Lind intentionally deceived the Firm as to his criminal history.

⁴⁷ FINRA Sanction Guidelines (2011), available at www.finra.org/oho (then follow “Enforcement” hyperlink to “Sanction Guidelines”).

⁴⁸ Sanction Guidelines at 2.

⁴⁹ Sanction Guidelines at 6.

⁵⁰ Sanction Guidelines at 7.

Cumulatively, Lind's misconduct demonstrates a lack of integrity and trustworthiness that makes a more severe sanction appropriate in order to protect investors. When lying on the Form U4 is coupled with repeated refusals to provide information or cooperate with a FINRA investigation, it is plain that Lind cannot be expected to comply with FINRA's Rules in the future.

With respect to Lind's willful failure to disclose the felony charge against him when he submitted his Form U4 in September 2009, a severe sanction would be appropriate. The Sanction Guidelines suggest a monetary penalty ranging from \$2,500 to \$50,000 and/or a suspension in any or all capacities for five to 30 business days for filing a false, misleading, or inaccurate Form.⁵¹ A felony charge may not be a statutory disqualification event – only a conviction leads to automatic statutory disqualification – but the potential for a statutory disqualification that a felony charge represents is a fact of immense importance. Concealing that fact creates an entirely – and materially – false and misleading impression of a clean criminal record. A suspension for 30 business days, the maximum suggested by the sanction guidelines, would be appropriate. However, in light of the bar imposed for violation of FINRA Rule 8210, as discussed below, the suspension would be superfluous and is not imposed.

With respect to Lind's failure to provide information sought by FINRA staff five separate times, the Sanction Guidelines clearly indicate that a complete failure to respond justifies a bar from the industry as a matter of course. The Guidelines say that a bar should be "standard" where there is a complete failure to respond.⁵²

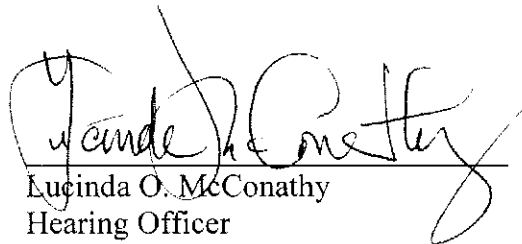
⁵¹ Sanction Guidelines at 69.

⁵² Sanction Guidelines at 33.

V. Order

The Hearing Officer finds that Respondent: (i) willfully failed to disclose on his Form U4 that he was the subject of a pending felony charge, in violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010; and (ii) repeatedly failed to respond to requests for information in connection with FINRA's investigation of the circumstances of his termination by his FINRA member firm, in violation of FINRA Rules 8210 and 2010. The first violation warrants a 30-business-day suspension. The second violation warrants a bar from association with any FINRA registered firm in any capacity.

The Hearing Officer orders that the Respondent is barred from association with any FINRA member firm in any capacity for his repeated failures to respond to requests for information. The Hearing Officer does not impose the additional sanction of a suspension for his willful failure to disclose on his Form U4 that he was the subject of a pending felony charge, because the suspension would be superfluous in light of the imposed bar. The Hearing Officer further notes, however, that Respondent is statutorily disqualified from associating with a FINRA member firm in the future as a result of the finding that Respondent's filing of a materially false and misleading Form U4 was *willful*.⁵³ The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Lucinda O. McConathy
Hearing Officer

⁵³ Securities and Exchange Act § 15(b)(4)(A).

Copies to: Jovany Josefy Lind (via overnight courier and first-class mail)
Christina Kang, Esq. (via electronic and first-class mail)
David Sonnenberg, Esq. (via electronic mail)
Mark Dauer, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

JOVANY JOSEFY LIND (CRD No. 5211913),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2009020589801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Jovany Josefy Lind willfully failed to disclose on a Uniform Application for Securities Industry Registration or Transfer ("Form U4") that he had been previously charged with a felony, in contravention of Article V, Section 2 of FINRA's By-Laws and in violation FINRA Rules 1122 and 2010. In addition, Lind failed to respond to requests for information sent to him by FINRA Staff pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

JURISDICTION

2. Respondent first became registered with FINRA as a General Securities Representative ("GSR") on May 16, 2008, through an association with FINRA member firm E1 Asset Management, Inc. ("E1" or the "firm") (BD No. 46872), where he remained registered, for the first time, until September 25, 2008.

3. Respondent was registered as a GSR with FINRA through an association with E1, for a second time, for the period from October 6, 2009, through November 17, 2009.
4. Respondent is no longer in the securities industry, but 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.

BACKGROUND

5. On or about May 29, 2009, Respondent was charged in Criminal Court in New York County with a felony (Grand Larceny in the Fourth Degree) for allegedly stealing property valued at \$1,387.13 from Best Buy.
6. Respondent resolved this charge on March 18, 2010 by pleading guilty to a violation of disorderly conduct which required that he pay a surcharge.

FIRST 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
FINRA Rules 1122 and 2010

7. The Department realleges and incorporates by reference paragraphs 1-6 above.
8. On September 18, 2009, in connection with his employment at E1, Lind signed a Form U4 that was submitted to FINRA's Central Registration Depository ("CRD") on his behalf by E1 on October 6, 2009.
9. Question 14A(1) on the Form U4 asks:

*Have you ever:
(b) been charged with any felony?*

10. Lind signed the Form U4 on which the "no" box was checked in answer to this question, despite his awareness that he had, in fact, been charged with a felony in connection with his May 2009 felony charge and the felony charge was still pending.
11. Lind willfully failed to disclose the fact that he had been charged with a felony on the Form U4 he completed and signed on September 18, 2009.
12. This fact is material to FINRA's ability to evaluate the fitness of individuals seeking entry to the securities industry and, similarly, to E1's ability to screen prospective employees.

By reason of the foregoing, Lind acted in contravention of Article V, Section 2 of FINRA's By-Laws and violated FINRA Rules 1122 and 2010.

SECOND CAUSE OF ACTION
(Failure to Respond to Requests For Documents and Information)
Violation of FINRA Rules 8210 and 2010

13. The Department realleges and incorporates by reference paragraphs 1-12 above.
14. By letter dated December 21, 2009, the Staff sent Lind a request for certain documents and information ("First Request").
15. The First Request was sent to Lind's address as listed in CRD ("CRD Address") and requested a response by January 7, 2010. The First Request was sent by first class and certified mail to Lind's CRD Address. The First Request sent by first class mail was not returned. The First Request was sent by certified mail was returned to the Staff with a label bearing the notation: "Return to Sender Unclaimed Unable to Forward." Lind did not respond to the First Request.

16. By a letter dated January 14, 2010, the Staff sent Lind a request again ("Second Request") requesting the same documents and information that were requested in the First Request. The Second Request did not include a copy of, or make reference to, the First request.
17. The Second Request was sent to Lind's CRD Address with the added information designating apartment "#GA" ("CRD Address Plus") and requested a response by January 29, 2010. The additional information regarding Lind's apartment was found on a document that the firm produced to the Staff. The Second Request was sent by first class mail and certified mail to Lind's CRD Address Plus. The Second Request sent by first class mail was not returned. The receipt for the Second Request sent by certified mail was returned bearing the signature "Jovany Lind". Lind did not respond to the Second Request.
18. By a letter dated February 5, 2010, the Staff sent a request to Lind ("Third Request") that included a copy of the First Request and again requested the documents and information.
19. The Third Request was sent to Lind's CRD Address and CRD Address Plus, both by first class mail and certified mail and requested a response by February 17, 2010. Both of the Third Requests sent by first class mail were not returned. Both of the Third Requests sent by certified mail were returned bearing the notation "Returned to Sender UNCLAIMED." Lind did not respond to the Third Request.
20. By a letter dated February 10, 2011, Enforcement sent a request to Lind ("Fourth Request") that included a copy of the First, Second, and Third Requests, and again requested the documents and information.

21. The Fourth Request was sent to Lind's CRD Address and CRD Address Plus, and three additional addresses: (1) [REDACTED] ("CRD Plus 6A"); (2) [REDACTED] ("CRD Plus 19"); and (3) [REDACTED] [REDACTED] ("CRD Plus 2E") each by first class mail and certified mail and requested a response by February 24, 2011. The additional addresses were found as a result of a public records search. None of the Fourth Requests sent by first class mail were returned. The receipts for all five of the Fourth Requests sent by certified mail were returned bearing the signature "Jovany Lind". Lind did not respond to the Fourth Request.
22. On or about February 16, 2011, Enforcement spoke with Lind during which time Lind confirmed that his correct address was the CRD Address Plus.
23. On or about March 4, 2011, Enforcement staff left detailed voicemail messages on Lind's home telephone and cell phone notifying Lind that he had not responded to the previous requests for information, and that he was required to do so.
24. By a letter dated March 8, 2011, Enforcement sent a request to Lind ("Fifth Request") that included a copy of the First, Second, Third, and Fourth Requests, and again requested the documents and information.
25. The Fifth Request was sent to Lind's CRD Address ,CRD Address Plus, CRD Plus 6A, CRD Plus 19, and CRD Plus 2E, each by first class mail and certified mail and requested a response by March 22, 2011. None of the Fifth Requests sent by first class mail were returned. The receipts for all five of the Fifth Requests sent by certified mail were returned bearing the signature "Jovany Lind". Lind did not respond to the Fifth Request.

By failing to respond to the Staff's letters seeking information and documents, Lind 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.
- 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 omissions to state material facts was on a Forum U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: June 8, 2011


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