

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Gregory Flemming, Jr. (CRD No. 2882842), Respondent.	DISCIPLINARY PROCEEDING NO. 2013037423701 HEARING OFFICER: MJD <u>ORDER ACCEPTING OFFER OF SETTLEMENT</u> Date: September 9, 2015
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INTRODUCTION

Disciplinary Proceeding No. 2013037423701 ("Complaint") was filed on December 17, 2014 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) ("Complainant"). Respondent Gregory Flemming, Jr. ("Flemming" or "Respondent") submitted an Offer of Settlement (Offer) to Complainant dated, September 3, 2015. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of

the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

In May 1997, Flemming first became registered with FINRA as a General Securities Representative ("GSR") through an association with a FINRA member firm. He became registered with FINRA as a General Securities Principal ("GSP") through a different member firm in March 2006. He has been registered with FINRA through an association with several member firms from May 1997, including with John Thomas Financial ("John Thomas") (BD No. 40982) and Rockwell Global Capital LLC, (BD No. 142485) (Rockwell or the Firm). Flemming has acted in the capacity as both a GSR and a GSP through three member firms.

On September 24, 2013, Rockwell filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that it had discharged Flemming because of "Pending regulatory issues concerning potential findings of willful failure to disclosed unsatisfied liens exacerbated by Firm's recent discovery of additional undisclosed liens, as well as failure to provide services to the firm for which Mr. Flemming was engaged."

On September 24, 2013, Flemming became associated with another member firm, as a GSR. He left that firm on June 26, 2015 and is not currently associated with a member firm. However, FINRA has jurisdiction over Flemming pursuant to Article V of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of the termination of his registration; and (2) the Complaint charges him with misconduct that occurred he was associated with a FINRA-registered firm.

ORIGIN OF DISCIPLINARY ACTION

This investigation commenced based upon a routine examination of Rockwell by FINRA's Department of Member Regulation Examination Staff which discovered during its examination that Respondent had certain liens and judgments filed against him which were not timely disclosed based on a review of Respondent's Uniform Application for Securities Industry Registration or Transfer ("Form U4").

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. While Flemming was registered with FINRA through an association with John Thomas Financial and, separately, with Rockwell, he willfully failed to timely disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") one judgment in the amount of \$122,616.58, two New York State tax warrants totaling \$19,120 and one federal tax lien in the amount of \$ 26,527.86. Also, Flemming failed to disclose one additional judgment in the amount of \$57,666.12. The judgments, tax warrants and liens which Flemming failed to timely disclose concerned material information.
2. In addition, Flemming falsely attested to the accuracy of his Form U4 to his then-employer, Rockwell, on the firm's Annual Compliance Meeting documents.
3. By reason of the foregoing, Flemming violated Article V, Section 2 of FINRA's By-Laws, NASD Conduct Rule 2110 (for conduct before December 15, 2008) and IM-1000-1 (for conduct before August 17, 2009), and FINRA Rules 1122 (for conduct on or after August 17, 2009) and 2010 (for conduct on or after December 15, 2008) in connection with his failure to update his Form U4, and FINRA Rule 2010 in

connection with the false attestation.

FIRST CAUSE OF ACTION

Failure to Timely Disclose Unsatisfied Judgments, Tax Warrants and Liens on a Form U4 Article V, Section 2 of FINRA's By-Laws, NASD Conduct Rule 2110 and IM-1000-1, and FINRA Rules 1122 and 2010

7. All applicants for registration with FINRA must complete and sign a Form U4. Article V, Section 2(c) of FINRA's By-Laws requires that associated persons keep their Forms U4 "current at all times," by supplementary amendments. Such amendments to Forms U4 shall be filed with FINRA "not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

8. NASD Rule IM-1000-1 provided that filing a Form U4 that was incomplete or inaccurate so as to be misleading, or the failure to correct such a filing, could constitute a violation of NASD Rule 2110. Effective August 17, 2009, FINRA Rule 1122 superseded NASD Rule IM-1000-1. FINRA Rule 1122 provides that "[n]o ... person associated with a member shall file with FINRA information with respect to ... 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."

9. Question 14M of the Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" If an affirmative answer is given to Question 14M, the registered person is required to provide details about the lien or judgment.

10. On or about June 24, 2008, the Supreme Court of the State of New York, County of Suffolk, entered a Default Judgment, index number 07-39091 (the "Order" or "Citibank Judgment") against Flemming ordering him to pay Citibank, N.A. \$113,183,

plus costs and interest. The Citibank Judgment was recorded by the Suffolk Supreme Court on September 4, 2008, in the amount of \$122,616.58, which reflects the default judgment amount, plus costs and interest.

11. The Citibank Judgment pertains to Flemming's second mortgage on his home, on which he defaulted. Flemming received notice of the Citibank Judgment on or around the date it was recorded by the Suffolk Supreme Court.

12. Flemming failed to timely disclose the Citibank Judgment on a Form U4. The Citibank Judgment should have been disclosed no later than October 4, 2008. Instead, Flemming first disclosed the above-referenced Citibank judgment through a Form U4 amendment on March 19, 2010, while associated with John Thomas, 531 days late. Although the Citibank Judgment was recorded on September 4, 2008, Flemming inaccurately reported on his Form U4 amendment that the Citibank Judgment was filed on March 2, 2010.

13. While Flemming was associated with Rockwell, he filed an amended Form U4 on December 13, 2012 in which he correctly reported that the Citibank Judgment event date was September 4, 2008. However, he incorrectly stated that the first reported date of the Citibank Judgment was December 13, 2012. The December 13, 2012 first reported date is inaccurate, because Flemming had first disclosed the Citibank Judgment on March 19, 2010.

14. FINRA's Central Registration Depository ("CRD") shows that the Citibank Judgment remains unsatisfied and that Flemming owes Citibank \$147,328.00.

15. The information concerning the Citibank Judgment was material. Moreover, Flemming knew or should have known about this judgment such that the

untimely disclosure of it was willful.

16. Separately, on or about December 14, 2009, a New York State Tax Warrant in the amount of \$3,589 was filed against Flemming. A tax warrant is the equivalent of a legal judgment and creates a lien against real and personal property when filed. Flemming received notice of the December 14, 2009 New York State Warrant through correspondence at his home address, in the beginning of 2010. Flemming also received correspondence from New York State, dated August 19, 2010, advising him that his current tax balance due was \$3,884.63 and his liability was subject to collection action and the accrual of additional penalty and/or interest. Relying on a notice date of the August 19, 2010 correspondence, Flemming was required to amend his Form U4 on September 18, 2010 to disclose the warrant. However, Flemming did not disclose the warrant on his Form U4 until December 13, 2012, 817 days late.

17. The information concerning the New York State Warrant was material. Moreover, Flemming knew or should have known about this warrant/lien such that his untimely disclosure was willful.

18. Again, on or about August 31, 2010, a Federal Tax Lien in the amount of \$26,527.86 was filed against Flemming.

19. Flemming received notice of the August 31, 2010 Federal Tax lien through correspondence sent to his home address, at or around the time the lien was filed. By certified mail from the IRS dated September 2, 2010, addressed to Flemming's home address, he was notified that a Federal Tax lien was filed against him in the amount of \$26,527.86. Flemming was required to amend his Form U4 to reflect the lien on October 2, 2010.

20. Flemming did not disclose the federal tax lien on his Form U4 until December 13, 2012, 803 days late. The lien remains unsatisfied.

21. The information about the Federal Tax lien was material. Moreover, Flemming knew or should have known about this lien such that his untimely disclosure was willful.

22. Next, on or about February 1, 2013, another New York State Tax Warrant was filed against Flemming in the amount of \$15,235.37.

23. Flemming received notice of the February 1, 2013, New York State Tax Warrant through correspondence sent to his home address. Specifically, Flemming received at his home address a notice of a tax compliance levy from New York State, dated July 15, 2013, advising him that as of February 1, 2013, he owed state taxes in the amount of \$16,076 (which included interest and penalties of \$841.17). The Warrant Identification Number ("ID") for the February 1, 2013 lien is E-426711342-W009-8. In that same correspondence, Flemming was reminded that taxes from a separate December 14, 2009 tax lien, in the amount of \$4,950.49 (which included \$1,362.34 in penalties and interest) was still outstanding. The separate Warrant ID for the December 14, 2009 lien is E-426711342-W003-7.

24. Flemming was required to amend his Form U4 to disclose the warrant within 30 days from the date of notice, or by August 14, 2013, however, Flemming did not disclose the warrant/lien on his Form U4 until September 17, 2013, 34 days late. The lien remains unsatisfied.

25. The information about the New York Tax Warrant was material. Moreover, Flemming knew or should have known about this warrant/lien such that the

untimely disclosure was willful.

26. Finally, on or about December 23, 2010, the Supreme Court of the State of New York, County of Suffolk, entered a civil judgment against Flemming in favor of Capital One Auto Finance in the amount of \$57,666.12. Flemming became aware of this judgment through certified mail in December 2010 and allegedly advised his former employer firm, John Thomas, about the incident at or around the time the judgment was filed.

27. However, Flemming's Form U4 was not updated to disclose the judgment until December 13, 2012, almost two years late, while he was associated with Rockwell.

28. The information concerning the judgment was material.

SECOND CAUSE OF ACTION

False Attestation on Firm's Annual Compliance Questionnaire and Form U4 Acknowledgement FINRA RULE 2010

29. On October 25, 2012, the day of Rockwell's Annual Compliance Meeting, Flemming signed a Compliance Attestation form related to the meeting, acknowledging that he had reviewed his most recent Form U4 and that no changes needed to be made and that his Form U4 was "correct as is." He also acknowledged, in a separate form, dated October 25, 2012 that he had attended the October 25th Meeting and that he had been asked to supply any changes to be made on his Form U4.

30. At the time he signed these forms, Flemming knew that he was subject to unsatisfied judgments and/or warrants/liens that were not disclosed on his then-current Form U4.

31. Flemming misled his employer firm, Rockwell, by falsely attesting to the

accuracy of his Form U4 on Annual Compliance Meeting documents, thus failing to observe high standards of commercial honor and just and equitable principles of trade.

Based on the foregoing, Flemming willfully violated Article V, Section 2(c) of FINRA's By-Laws and NASD Conduct Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010 by failing to timely disclose the September 4, 2008 Citibank Judgment, December 14, 2009 New York Tax Warrant, and the August 31, 2010 Federal Tax Lien, February 1, 2013 New York Tax Warrant, and violated Article V, Section 2(c) of FINRA's By-Laws and violated FINRA Rules 1122 and 2010 by failing to timely disclose the December 23, 2010, Capital One Auto Finance Judgment. Respondent also violated FINRA Rule 2010 by making false attestations to his employer in an Annual Compliance Meeting Questionnaire.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be fined \$5,000 and suspended for four months from associating with any FINRA member firm. The fine shall be due and payable either immediately upon reassociation with a member firm following the four-month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in dark ink, appearing to read 'Kathleen S. Lynch', written over a horizontal line.

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