

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Frederick Juri Kotowitz (CRD No. 4170441),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013037815302

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On two separate occasions between July and August 2012 while associated with a FINRA-regulated entity, Respondent Frederick Juri Kotowitz willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose civil judgments in violation of Article V, Section 2(c) of FINRA By-Laws, and FINRA Rules 1122 and 2010. Respondent also failed to timely respond to FINRA Rule 8210 requests for information in violation of FINRA Rules 8210 and 2010. In addition, Respondent failed to respond to requests for testimony in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry in March 2000 with a FINRA-regulated entity and was approved as a General Sales Representative ("GSR") in June 2000.

Respondent remained associated as a GSR with that entity until August 2001. Thereafter, between September 2001 and January 2011, Respondent served as a GSR with a number of other FINRA-regulated entities. In October 2011, Respondent joined LPL Financial LLC (“LPL”), where he served as a GSR until July 26, 2013. Respondent is not currently associated with any FINRA-regulated entity.

3. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because the Complaint was filed within two years after the effective date of termination of Respondent’s registration with LPL, namely, July 26, 2013.

4. In addition, the Complaint charges Respondent with failing to respond to FINRA requests for information and testimony, during the two-year period after the date upon which Respondent ceased to be registered or associated with a FINRA-regulated entity.

STATEMENT OF FACTS

Willful Failures to Amend Form U4 to Disclose Material Information

Respondent’s June 2012 Civil Judgment

5. On October 14, 2011, in connection with his registration with LPL, Respondent signed and submitted an initial Form U4 in which he agreed to timely update the Form U4 whenever changes occurred that made any previous answer inaccurate.

6. On or about May 30, 2012, Respondent was duly served with a Small Claims Writ and Notice of Suit (“May 30th Complaint”) in a civil matter seeking \$792.91 plus costs and fees.

7. On or about June 1, 2012, the May 30th Complaint and proof of service were filed with the Small Claims Part of the Connecticut Superior Court (the “Superior Court”). On June 6,

2012, the Superior Court sent Respondent an Answer Notice requiring Respondent to file an Answer by June 22, 2012.

8. On June 29, 2012, a civil judgment for \$872.16 was entered by the Superior Court against Respondent in favor of the plaintiff (the "June 2012 Judgment").

9. On June 29, 2012, the Superior Court sent Respondent a Notice of Judgment or Disposition ("NJD") by first class mail, notifying him of the June 2012 Judgment.

10. Respondent knew or should have known of the June 2012 Judgment in July 2012.

11. Respondent was required to amend his Form U4 within 30 days of his receipt of notice of the June 2012 Judgment.

12. On February 13, 2013, Respondent made a \$226.95 partial payment for damages and an income execution related to the June 2012 Judgment.

13. Respondent's Form U4 was amended on April 24, 2013 disclosing the June 2012 Judgment.

Respondent's July 2012 Civil Judgment

14. On or about May 16, 2012, Respondent was duly served with a Small Claims Writ and Notice ("May 16th Complaint") in a civil matter seeking \$2,802.04 plus costs and fees.

15. On or about June 5, 2012, the May 16th Complaint and proof of service of the Small Claims Writ and Notice of Suit was filed with the Small Claims Part of the Superior Court.

16. On June 6, 2012, the Superior Court sent Respondent an Answer Notice requiring Respondent to file an Answer by June 26, 2012.

17. On July 9, 2012, a civil judgment for \$2,880.54 was entered by the Superior Court against Respondent in favor of the plaintiff (the "July 2012 Judgment").

18. On July 9, 2012, the Superior Court sent Respondent a NJD by first class mail at a residential address known to Respondent's creditor, notifying him of the July 2012 Judgment.

19. Respondent knew or should have known of the July 2012 Judgment in July 2012.

20. Respondent was required to amend his Form U4 within 30 days of his receipt of notice of the July 2012 Judgment.

21. Respondent's Form U4 was amended on April 24, 2013 disclosing the July 2012 Judgment.

Respondent's Failure to Timely Respond to Requests for Information

22. On October 2, 2013 and October 17, 2013, pursuant to FINRA Rule 8210, FINRA sent letters to Respondent by certified mail, return receipt requested, and first class mail at his last known address as reflected on the Central Registration Depository ("CRD Address"). Each letter required Respondent to provide a written statement and documents regarding the allegation that he failed to timely amend his Form U4 to disclose unsatisfied civil judgments. Respondent's responses to the letters were due on October 16, 2013 and October 21, 2013, respectively.

23. Respondent failed to respond to FINRA's Rule 8210 requests for information and documents within the prescribed time periods.

24. On December 27, 2013, FINRA initiated an expedited proceeding, pursuant to FINRA Rule 9552, against Respondent and sent Respondent a letter notifying him that his registration with FINRA would be suspended on January 21, 2014, and on March 31, 2014, he would be barred from associating with any FINRA member in any capacity for failing to respond to FINRA's requests for information.

25. On January 20, 2014, prior to the date his suspension was scheduled to start, Respondent provided a written statement responding to FINRA's requests for information and documents.

Respondent's Failure to Respond to Requests for Testimony

26. On July 17, 2014, Enforcement sent a letter requesting, pursuant to FINRA Rule 8210, that Respondent appear and provide testimony on July 30, 2014 at Enforcement's office in New York, New York. The letter and copies of the letter were sent by Federal Express ("FEDEX"), certified mail with return receipt requested, and first class mail to Respondent at the CRD Address. Enforcement also sent a copy of the letter to Respondent at an email address known to Enforcement.

27. The letter sent by FEDEX to the CRD Address was delivered on July 21, 2014. The copy of the letter sent by certified mail with return receipt requested to the CRD Address was returned to Enforcement marked "Unclaimed." The copy of the letter sent by first class mail to the CRD Address was not returned to Enforcement.

28. Respondent failed to appear and testify on July 30, 2014.

29. On September 9, 2014, Enforcement sent a letter requesting, pursuant to FINRA Rule 8210, that Respondent appear and provide testimony on September 25, 2014 at Enforcement's office in New York, New York. The letter and a copy of the letter were sent by certified mail with return receipt requested and first class mail to Respondent at the CRD Address. Enforcement also sent a copy of the letter to Respondent at an email address known to Enforcement.

30. The letter sent by certified mail with return receipt requested to the CRD Address was returned to Enforcement marked “Unclaimed.” The copy of the letter sent by first class mail to the CRD Address was not returned to Enforcement.

31. Respondent failed to appear and testify on September 25, 2014.

32. On September 25, 2014, Enforcement sent a letter requesting, pursuant to FINRA Rule 8210, that Respondent appear and provide testimony on October 3, 2014 at Enforcement’s office in New York, New York. The letter and copies of the letter were sent by Federal Express, certified mail with return receipt requested, and first class mail to Respondent at the CRD Address. On September 29, 2014, Enforcement sent a copy of the letter to Respondent at an email address known to Enforcement.

33. The letter sent by FEDEX to the CRD Address was delivered on September 30, 2014. The copy of the letter sent by certified mail with return receipt requested to the CRD Address was returned to Enforcement marked “Unclaimed.” The copy of the letter sent by first class mail to the CRD Address was not returned to Enforcement.

34. On September 30, 2014, Enforcement received an email from Respondent claiming that he could not appear and testify on October 3, 2014 because of work obligations. Without proposing a date for his testimony, Respondent stated that he could make arrangements for a date later in the month.

35. On October 1, 2014, Enforcement notified Respondent that his request for an adjournment was denied.

36. Respondent failed to appear and testify on October 3, 2014.

37. On October 3, 2014, Respondent sent Enforcement an email stating, “I cannot get away from work. I have provided financial evidence of my situation. I’m not sure why this needs

to be adversarial rather than working to set things right. As I cannot afford counsel, not to take time off work, please advise.”

38. On December 19, 2014, Enforcement sent a letter requesting, pursuant to FINRA Rule 8210, that Respondent appear and provide testimony on January 6, 2015 at Enforcement’s office in New York, New York. The letter and a copy of the letter were sent by certified mail with return receipt requested, and first class mail to Respondent at the CRD Address. Enforcement also sent a copy of the letter to Respondent at an email address known to Enforcement.

39. The letter and copy of the letter sent by certified mail with return receipt requested and first class mail to the CRD Address were not returned to Enforcement.

40. Respondent failed to appear and testify on January 6, 2015.

FIRST CAUSE OF ACTION
FAILURE TO DISCLOSE CIVIL JUDGMENTS
(Article V, Section 2 of the FINRA By-Laws and FINRA Rules 1122 and 2010)

41. The Department realleges and incorporates by reference paragraphs 1 through 40, above.

42. Article V, Section 2(c) of the FINRA By-Laws requires that registrations filed with FINRA be kept current at all times and that amendments must be filed with FINRA “not later than 30 days after learning of the facts or circumstances giving rise to the amendment.”

43. FINRA Rule 1122 provides, “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.”

44. FINRA Rule 2010 provides in relevant part that “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.”

45. 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.

46. On October 14, 2011, in connection with his registration with LPL, Respondent signed and submitted an initial Form U4 in which he agreed to timely update the Form U4 whenever changes occurred that made any previous answer inaccurate.

47. On June 29, 2012, the June 2012 Judgment for \$872.16 was entered by the Superior Court against Respondent. On June 29, 2012, the Superior Court mailed a NJD to Respondent at the CRD Address notifying Respondent of the entry of the June 2012 Judgment against him.

48. On July 9, 2012, the July 2012 Judgment for \$2,880.54 was entered by the Superior Court against Respondent. On July 9, 2012, the Superior Court mailed a NJD to Respondent at the CRD Address notifying Respondent of the entry of the July 2012 Judgment against him.

49. Between July 2012 and April 23, 2013, Respondent did not amend or cause his Form U4 to be amended to report the June 2012 Judgment or the July 2012 Judgment.

50. Although Respondent was aware of his obligation to amend his Form U4 to report each judgment within 30 days of his receipt of written notification of each judgment, Respondent willfully failed to do so.

51. By willfully failing to timely amend his Form U4 on two separate occasions to disclose the existence of each judgment described above, Respondent willfully violated Article V, Sec. 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

SECOND CAUSE OF ACTION

Failure to Timely Comply with Requests for Information
(FINRA Rules 8210 and 2010)

52. The Department realleges and incorporates by reference paragraphs 1 through 51, above.

53. FINRA Rule 8210 provides that FINRA staff has the right to require a person subject to FINRA's jurisdiction to provide information and testimony with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.

54. FINRA Rule 8210 required Respondent to timely respond to requests for documents and information and testimony.

55. By letters dated October 2, 2013 and October 17, 2013, FINRA requested, pursuant to FINRA Rule 8210, that Respondent provide a written statement and various documents by specified dates.

56. Respondent failed to respond to FINRA's requests within the prescribed time periods set forth in the October 2, 2013 and October 17, 2013 8210 requests.

57. Respondent did not seek an extension of time to respond to the requests set forth in the October 2, 2013 and October 17, 2013 8210 requests.

58. Only after FINRA initiated an expedited proceeding, pursuant to FINRA Rule 9552, against Respondent on December 27, 2013 seeking his suspension did he respond to FINRA's requests for information and documents on January 20, 2014.

59. By failing to timely respond to FINRA's requests for information and documents, Respondent violated FINRA Rules 8210 and 2010.

THIRD CAUSE OF ACTION
Failure to Comply with Requests for Testimony
(FINRA Rules 8210 and 2010)

60. The Department realleges and incorporates by reference paragraphs 1 through 59, above.

61. By letters duly served on Respondent and dated July 17, 2014, September 9, 2014, September 25, 2014, and December 19, 2014, Enforcement requested, pursuant to FINRA Rule 8210, that Respondent appear and testify on specified dates.

62. Respondent failed to appear and testify as requested.

63. By failing to appear and testify, Respondent violated FINRA Rules 8210 and 2010.

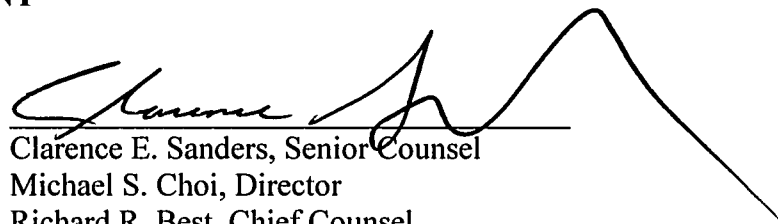
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. order that Respondent(s) bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. 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: April 6, 2015

A handwritten signature in black ink, appearing to read "Clarence", is written over a horizontal line. A long, sweeping flourish extends from the end of the signature across the right side of the page.

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