FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. EDDIE BASORA, JR. (CRD No. 4388378), Respondent.	Disciplinary Proceeding No. 2014040809501 Hearing Officer–CC **HEARING PANEL DECISION** November 8, 2017

Respondent failed to timely update his Form U4 to disclose a felony charge and plea of *nolo contendere*, in violation of Article V, Section 2 of FINRA's By-Laws, NASD IM 1-1000-1, and FINRA Rules 1122 and 2010. Respondent also failed on three occasions to appear for on-the-record testimony, in violation of FINRA Rules 8210 and 2010. For this misconduct, Respondent is barred.

Appearances

For the Complainant: Rebecca Segrest, Esq., and Penelope Blackwell, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Eddie Basora, Jr., *pro se*.

I. Introduction

Eddie Basora, Jr. filed a Uniform Application for Securities Industry Registration or Transfer ("Form U4") on March 25, 2008, in which he answered "no" to the questions of whether he had ever been charged with, and pled *nolo contendere* to, a felony. On May 5, 2009, he was charged with a felony, and he pled *nolo contendere* on November 8, 2010. Basora failed to update his Form U4 to disclose the felony charge and *nolo contendere* plea until March 27, 2014. FINRA's Department of Enforcement learned of this and other disclosure deficiencies on Basora's Form U4 and sought to investigate the accuracy of all of Basora's Form U4 answers. Enforcement requested that he appear for on-the-record testimony. On three occasions, Basora failed to appear.

Enforcement filed a Complaint on December 6, 2016. Cause one of the Complaint alleged that Basora willfully failed to timely amend his Form U4 to disclose a felony charge and plea of *nolo contendere*, in violation of Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (now FINRA Rule 1122), and FINRA Rules 1122 and 2010. Cause two of the Complaint alleged that Basora failed to appear three times for on-the-record testimony, in violation of FINRA Rules 8210 and 2010.

Basora admitted his failures to appear for testimony and to timely disclose a felony charge and plea on his Form U4. He argued that extenuating circumstances and mitigating factors exist.

We find, as alleged in the Complaint, that Basora willfully failed to timely amend his Form U4 to disclose a felony charge and plea of *nolo contendere*, and failed to appear three times for on-the-record testimony.

II. Findings of Fact

A. Basora's Background in the Securities Industry

Basora entered the securities industry in 2001.[1] He joined Merrimac Corporate Securities, Inc. ("Merrimac") in March 2008 and filed a Form U4 on March 25, 2008.[2] In August 2014, Merrimac became Freedom Investors Corp. ("Freedom"), and Basora transferred his registration to Freedom.[3]

At all times relevant to the Complaint, question 14A on the Form U4 read as follows:

> (1) Have you ever:
>
> (a) been convicted or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
>
> (b) been *charged* with any *felony*?[4]

Basora answered "no" to both parts of question 14A(1) in the Form U4 he filed on March 25, 2008.[5]

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[1] Complainant's Exhibit ("CX-")1, at 8.

[2] *Id.* at 10; CX-2.

[3] CX-1, at 10; Transcript of July 18, 2017 Hearing ("Tr.") 22, 37.

[4] CX-2, at 8 (italics in original).

[5] *Id.*

B. The Felony Charge and Basora's Plea

In May 2009, Basora was charged in Orange County, Florida, with third-degree felony possession of a controlled substance.[6] On November 8, 2010, he entered a plea of *nolo contendere* and was found guilty without adjudication.[7]

Basora updated his Form U4 on August 30, 2011, and December 7, 2011.[8] Basora did not change his "no" answers to questions 14A(1)(a) and (1)(b) in the two 2011 amendments.[9] Basora first updated his Form U4 to answer "yes" to questions 14A(1)(a) and (1)(b) on March 27, 2014.[10] Basora testified that he updated his Form U4 at that time because Freedom advised him to.[11]

On January 26, 2015, a FINRA Regulatory Review Analyst sent a letter to Basora's firm indicating that Basora was subject to statutory disqualification arising from his November 8, 2010 plea of *nolo contendere* and subsequent felony conviction.[12] FINRA also sent a copy of the January 26, 2015 letter to Basora's address of record as indicated in the Central Registration Depository ("CRD").[13]

On February 26, 2015, Freedom terminated Basora's association with the firm because of Basora's inability to meet registration requirements (because of his statutory disqualification).[14]

C. FINRA's Investigation and Rule 8210 Requests for Testimony

FINRA commenced its investigation of Basora when FINRA's Registration and Disclosure Department learned that Basora repeatedly filed for bankruptcy protection without

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[6] CX-27, at 3-24; Tr. 44-45, 159.

[7] CX-27, at 18-24; Tr. 44.

[8] CX-1, at 27; Tr. 155-56.

[9] Tr. 155-56.

[10] CX-3, at 9, 13-15; Tr. 25-26, 104-05. FINRA principal examiner CG testified that she printed CX-3, which is Basora's March 27, 2014 Form U4 amendment, with a print option selected to highlight in red the changes Basora made in the filing. Tr. 104-05.

[11] Tr. 25. Basora testified that he quickly updated his Form U4 when FINRA notified his firm that he needed to update it and was subject to statutory disqualification. Tr. 150.

[12] CX-32. Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78c(a)(39)(F), states that a person is subject to statutory disqualification from association with a FINRA member firm if he or she has been convicted of any felony within ten years of association.

[13] CX-1, at 2; CX-32, at 2; Tr. 102-03. CRD indicates that Basora's address of record from January 2013 to the present is an address in Orlando, Florida (the "CRD Address"). CX-1, at 2. Basora testified that, while he was active in the securities industry, he received mail at the CRD Address. Tr. 20-21. He stated that he resided nearby, but his mother and sister lived at the CRD Address, so he used it as a mailing address. Tr. 39-40.

[14] CX-1, at 6.

disclosing it on the Form U4, and that he failed to disclose a federal tax lien.[15] Enforcement obtained some information about Basora's bankruptcy filings and tax lien from Freedom, but had additional questions for Basora.[16]

By letter dated July 21, 2016, Enforcement requested pursuant to FINRA Rule 8210 that Basora appear at FINRA's offices in Atlanta, Georgia, on August 11, 2016, to provide on-the-record testimony.[17] FINRA sent the request by certified and first-class mail to Basora's CRD Address.[18] Basora testified that he traveled for work, but received mail at the CRD Address in July 2016.[19] The United States Postal Service indicated it delivered the certified mailing on July 25, 2016.[20] FB, who Basora identified as his cousin, signed the delivery receipt.[21] Basora admitted that he did not appear for testimony on August 11, 2016.[22] He testified that he would have appeared if he had understood the importance of his appearance.[23]

By letter dated August 12, 2016, Enforcement requested pursuant to FINRA Rule 8210 that Basora appear at FINRA's offices in Atlanta, Georgia, on September 1, 2016, to provide on-the-record testimony.[24] FINRA sent the request by certified and first-class mail to Basora's CRD Address.[25] The United States Postal Service indicated it delivered the certified mailing on August 16, 2016.[26] An individual signed the delivery receipt "Eddie Basora, Jr."[27]

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[15] Tr. 100-02; CX-1, at 16-20. Basora had acquired as rental property several pieces of residential real estate that he was in danger of losing through foreclosure. Tr. 27-29, 50-51, 172. He met a lawyer who offered, for $500 per filing, to assist Basora with filing three "skeleton bankruptcies" to forestall foreclosure on three real estate parcels and provide Basora with time to obtain loan modifications. Tr. 27-29, 50. Basora never intended to "go through" with the bankruptcies. Tr. 28. Each of the three bankruptcy filings was later dismissed. CX-35, at 6-17; Tr. 48-50.

Basora learned about an IRS tax lien in June 2012 when the IRS garnished his wages. Tr. 30-31, 47; CX-1, at 19-20. He disclosed the lien in a June 2014 amendment to his Form U4. CX-1, at 19; Tr. 30.

[16] Tr. 123-24; CX-31.

[17] CX-6.

[18] *Id.* at 1, 12; CX-1, at 2.

[19] Tr. 53-54.

[20] CX-6, at 12.

[21] *Id.*; Tr. 146-47.

[22] Tr. 54. *See also* Tr. 125 (FINRA Examiner CG's testimony that Basora did not appear on August 11, 2016); CX-11.

[23] Tr. 147.

[24] CX-7.

[25] *Id.* at 1, 12; CX-1, at 2.

[26] CX-7, at 12.

[27] *Id.*

Basora testified, however, that the signature did not look like his, and he could not recall receiving this letter.[28] Basora was excused from appearance, and he did not testify.[29]

By letter dated September 27, 2016, Enforcement requested pursuant to FINRA Rule 8210 that Basora appear at a business center in Orlando, Florida on October 13, 2016, to provide on-the-record testimony.[30] FINRA sent the request by certified and first-class mail to Basora's CRD Address.[31] Basora testified that he saw some of FINRA's Rule 8210 requests, but he could not say for certain whether he had seen this one.[32] Basora received mail at the CRD Address at this time.[33] The United States Postal Service indicated it delivered the certified mailing on October 1, 2016.[34] The signature on the delivery receipt is not legible.[35] Basora learned of the request, although he could not recall how he learned of it.[36] Basora admitted that he did not appear for testimony on October 13, 2016.[37] Basora called Enforcement on October 13 after he failed to appear.[38] At 3:03 p.m. on October 13, 2016, Enforcement emailed Basora to confirm that Basora had called and agreed to reschedule his testimony for October 21, 2016.[39]

By letter dated October 14, 2016, Enforcement requested pursuant to FINRA Rule 8210 that Basora appear at a business center in Orlando, Florida on October 21, 2016, to provide on-the-record testimony.[40] FINRA sent the request by certified and first-class mail to Basora's CRD Address.[41] FINRA also sent a copy of the letter to Basora's email address.[42] Basora did not recall receiving the hard copy of this letter, although he recalled receiving the email.[43] The United States Postal Service indicated it attempted delivery, but an authorized recipient was not

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[28] Tr. 55-56.

[29] Tr. 57. Basora's mother passed away, so Enforcement rescheduled Basora's testimony for October 13, 2016. Tr. 57.

[30] CX-8.

[31] *Id.* at 1, 12-14; CX-1, at 2.

[32] Tr. 58.

[33] Tr. 56.

[34] CX-8, at 12-13.

[35] *Id.* at 12.

[36] Tr. 60.

[37] Tr. 59. *See also* Tr. 126 (FINRA Examiner CG's testimony that Basora did not appear on October 13, 2016); CX-12.

[38] Tr. 60-62.

[39] CX-15. Basora confirmed he received Enforcement's email. Tr. 61-62.

[40] CX-9.

[41] *Id.* at 1, 12-14; CX-1, at 2.

[42] Tr. 65; CX-16.

[43] Tr. 64-65.

available, and it returned the certified mailing to Enforcement marked "unclaimed."[44] On the morning of October 21, Basora contacted Enforcement and requested a postponement of his scheduled testimony because his dog had been badly injured that morning.[45] Enforcement agreed to postpone Basora's appearance. Basora admitted receiving an email Enforcement sent later that day, rescheduling his on-the-record testimony for October 25, 2016.[46]

By letter dated October 21, 2016, Enforcement requested pursuant to FINRA Rule 8210 that Basora appear at a business center in Orlando, Florida, on October 25, 2016, to provide on-the-record testimony.[47] Enforcement sent the request by certified and first-class mail to Basora's CRD Address and attached a copy to its October 21, 2016 email to Basora.[48] The United States Postal Service indicated it delivered the certified mailing on October 24, 2016.[49] The signature on the delivery receipt is illegible.[50]

In total, Enforcement sent five requests for Basora's testimony, each of which was signed by Enforcement's "Senior Regional Counsel."[51] (Basora was excused from two appearances.) Each of the five requests advised Basora that the "[f]ailure to answer any questions completely and truthfully, or failure to provide any information requested by the staff, could violate Rule 8210 and . . . lead to the imposition of sanctions, including a bar from the industry . . . ."[52] Each 8210 request also stated that Basora "may be represented by counsel" when he testified, and he would be allowed to "consult with counsel during breaks and between questions."[53]

Basora's testimony was scheduled for 9:00 a.m. on October 25.[54] Basora contacted Enforcement on October 25 and left voicemail messages at 9:03 a.m. and 9:10 a.m., stating he was running late.[55] Sometime thereafter, Basora arrived at the building where he was scheduled to provide testimony.[56] Basora did not enter the building because, as he was about to enter, he received a call from a friend who Basora trusts and respects.[57] The friend advised Basora against

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[44] CX-9, at 12-13.

[45] Tr. 64-66.

[46] Tr. 65-67; CX-18. Enforcement attached a Rule 8210 request letter (CX-10) to the email. Tr. 67.

[47] CX-10.

[48] *Id.* at 1, 4; CX-1, at 2; CX-18; Tr. 66-67.

[49] CX-10, at 4.

[50] *Id.*

[51] CX-6, at 1; CX-7, at 1; CX-8, at 1; CX-9, at 1; CX-10, at 1.

[52] CX-6, at 2; CX-7, at 3; CX-8, at 2; CX-9, at 2; CX-10, at 2.

[53] CX-6, at 2; CX-7, at 3; CX-8, at 2; CX-9, at 2; CX-10, at 2.

[54] CX-10, at 1; CX-18.

[55] CX-23; Tr. 73-75.

[56] Tr. 75.

[57] Tr. 69-70.

testifying before Enforcement without a lawyer present.[58] Basora never entered the building and instead called Enforcement to say he wanted to retain counsel to appear with him.[59] Enforcement's counsel advised Basora to contact her immediately after retaining counsel.[60] Enforcement's counsel contacted Basora again later that day to inquire as to whether Basora had retained counsel, and Basora advised Enforcement that he had not.[61] Enforcement thereafter advised Basora that it intended to commence a disciplinary action against him.[62]

On October 26, 2016, Enforcement emailed a Wells Notice to Basora, confirmed he had not hired a lawyer, and offered to communicate directly with any attorney that he subsequently hired.[63] Enforcement filed the Complaint on December 6, 2016. Basora eventually retained a lawyer who he described as a family friend.[64] He did not have sufficient funds to pay the attorney, and she withdrew as counsel in June 2017.[65]

III. Conclusions of Law

A. FINRA Properly Exercised Jurisdiction Over Basora

Basora first associated with a FINRA member firm in 2001 and remained associated with a member firm until Freedom terminated his association in February 2015.[66] Basora is no longer registered or associated with a FINRA member firm. He remains subject to FINRA's jurisdiction because Enforcement filed the Complaint on December 6, 2016, which is within two years of the effective date of the termination of Basora's registration in February 2015. The Complaint alleged that Basora failed to timely update his Form U4 while he was registered with FINRA and

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[58] Notwithstanding that Enforcement's five requests for testimony were signed by a "Senior Regional Counsel," Basora indicated that it had not occurred to him that Enforcement's representative was a lawyer. Tr. 69-70. Basora testified:

> [Basora's friend was] like, dude, this is your license. This is your livelihood. He's like you've been miserable for the last year because you're not working. He's like do you really want to testify without having a lawyer, because that lady you're going to see is a lawyer. I was like that lady is a lawyer?

Tr. 69. *See also* Tr. 80-83.

[59] Tr. 69-70, 75. *See also* Tr. 128 (FINRA Examiner CG's testimony that Basora did not appear on October 25, 2016); CX-14.

[60] Tr. 83.

[61] Tr. 84-85.

[62] Tr. 85-86.

[63] Tr. 77; CX-19.

[64] Tr. 70, 78, 89. Basora could not recall if he hired the attorney before Enforcement filed the Complaint. Tr. 92. The Notice of Complaint indicated Basora's Answer was due on or before January 3, 2017. Basora apparently did not have representation at that time because he personally contacted Enforcement's attorney to request an extension of time to file an Answer. Tr. 94-95.

[65] Tr. 70-71, 77-78, 96.

[66] CX-1, at 6.

associated with FINRA member firms Merrimac and Freedom. The Complaint also alleged that Basora failed to appear for on-the-record testimony during the two-year period following the termination of his registration.[67] FINRA properly exercised jurisdiction over Basora.

B. Basora Failed to Timely Update His Form U4 as Alleged in Cause One

Cause one of the Complaint alleged that Basora willfully failed to timely amend his Form U4 to disclose a felony charge and plea of *nolo contendere*, in violation of Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (now FINRA Rule 1122), and FINRA Rules 1122 and 2010.[68]

Article V, Section 2(c) of FINRA's By-Laws states that every application for registration filed with FINRA shall be kept current by supplementary amendments filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment. Amendments involving statutory disqualification must be filed not later than ten days after the disqualification occurs.[69] NASD IM-1000-1 and FINRA Rule 1122 proscribe registered persons from filing with FINRA registration information that is incomplete or inaccurate so as to be misleading, or the failure to correct such a filing after notice thereof. These rules apply "to Form U4, which is used by [FINRA] and other self-regulatory organizations to determine the fitness of applicants for registration as securities professionals."[70] FINRA Rule 2010 requires member firms to adhere to high standards of commercial honor and just and equitable principles of trade, and FINRA Rule 0140 makes Rule 2010 applicable to all associated persons. "Filing a misleading Form U4, in addition to violating [IM-1000-1 and Rule 1122], violates the standard of just and equitable principles of trade to which every person associated with a [FINRA] member is held."[71]

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[67] *See* Article V, Section 4 of FINRA's By-Laws (stating that a person whose association with a member firm has terminated shall continue to be subject to the filing of a complaint based on conduct that occurred prior to the termination or upon the person's failure, while subject to FINRA's jurisdiction, to provide information requested pursuant to FINRA's Rules if the complaint is filed within two years after the effective date of termination of registration or the date upon which the person ceased to be associated with a member firm).

[68] Effective August 17, 2009, the Securities and Exchange Commission approved FINRA Rule 1122, which superseded NASD IM-1000-1. *See* FINRA Regulatory Notice 09-33 (June 2009), http://www.finra.org/sites/default/files/NoticeDocument/p118967.pdf. Cause one of the Complaint alleged that Basora violated NASD IM-1000-1 during the period from his arrest on May 6, 2009, until August 17, 2009, the effective date of FINRA Rule 1122, and FINRA Rule 1122 from August 17, 2009, through Basora's March 27, 2014 Form U4 amendment.

[69] On January 26, 2015, FINRA's registration and disclosure department advised Freedom that Basora was subject to statutory disqualification as a result of his November 8, 2010 plea of *nolo contendere* and conviction of a third-degree felony. CX-32. Thus, Article V, Section 2(c) required Basora to update his Form U4 within ten days of November 8, 2010.

[70] *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008).

[71] *Id.*; *see also Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *25 (Apr. 18, 2013) ("Because Form U4 is so important, every Form U4 filed with FINRA must be accurate, and must be kept current through supplemental amendments that are to be filed within thirty days of learning of the facts and circumstances giving rise to the amendment."), *aff'd*, 575 F. App'x 1, 2014 U.S. App. LEXIS 1559 (D.C. Cir. Aug. 13, 2014); *Daniel Richard Howard*, Exchange Act Release No. 46269, 2002 SEC LEXIS 3421, at *9 (July 26, 2002) (same).

Form U4 plays a pivotal role for member firms and regulators in assessing the fitness of individual applicants for registration and association.[72] The accuracy of disclosures on the Form U4 also factors into protecting the investing public, which can access information reported in Forms U4 via BrokerCheck® and use the information to decide "to whom to entrust investor monies."[73] The importance of Form U4 disclosures cannot be overstated.[74]

Basora was arrested in May 2009 and charged with a third-degree felony.[75] Basora knew that he was charged with a felony.[76] He hired a lawyer to represent him in the criminal matter and on November 8, 2010, signed a *nolo contendere* plea.[77] Yet he did not update his answers on the Form U4 to questions 14A(1)(a) and (1)(b) to accurately disclose the felony charge and *nolo contendere* plea until March 27, 2014, more than four years after his arrest and more than three years after his *nolo contendere* plea.[78] Both were well outside the time period required by FINRA's Rules. "A registered representative has a continuing obligation to timely update information required by Form U4 as changes occur."[79] Basora made no effort to update his Form U4 until he was forced by his firm to do so and was statutorily disqualified from the industry.

Basora denied that he intentionally concealed his arrest from Merrimac and Freedom. He claimed he told DM, Merrimac's compliance manager, when he was arrested in 2009.[80] We do not find Basora's claim credible. Basora did not provide sufficient detail about his purported conversation with DM, such as when it occurred, where it occurred, or what exactly he disclosed to DM, for us to credit his claim. Furthermore, regardless of whether Basora had a conversation with DM about his arrest, the responsibility for ensuring that Basora's Form U4 was updated and accurate rested solely with Basora. "Every person submitting Form U4 has the obligation to

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[72] *See John D. Audifferen,* Exchange Act Release No. 58230, 2008 SEC LEXIS 1740, at *34 (July 25, 2008) ("[T]he candor and forthrightness of applicants [on the Form U4] is critical to the effectiveness of the screening process.").

[73] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012).

[74] *See id.*; *Dep't of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *16 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015).

[75] CX-27, at 3-24; Tr. 44-45, 159.

[76] Tr. 159.

[77] Tr. 44; CX-27, at 24. Basora signed a document that stated he pleaded "*nolo contendere* to possession of cocaine" and that he entered the plea because he believed it was in his own interest. CX-27, at 9.

[78] CX-3, at 9, 13-15; Tr. 25-26, 104-05.

[79] *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *11 (Mar. 15, 2016). *See also Amundsen*, 2013 SEC LEXIS 1148, at *25 (reinforcing registered person's duty to amend the Form U4 as necessary to maintain accuracy).

[80] Tr. 26, 110, 144. FINRA no longer possesses jurisdiction over DM. Tr. 109. Examiner CG testified that DM, who is elderly and ill, advised her by letter that he was unaware of Basora's arrest in 2009. Tr. 109-110; CX-28. Hearsay evidence such as DM's letter to CG is admissible in FINRA proceedings. *Rooney A. Sahai*, Exchange Act Release No. 51549, 2005 SEC LEXIS 864, at *24 (Apr. 15, 2005). It must be evaluated, however, for its probative value, reliability, and fairness. *Carlton Wade Fleming*, 52 S.E.C. 409, 411 n.7 (1995). We do not find DM's letter to be reliable. DM was ill, elderly, and did not communicate directly with CG. He communicated only through his spouse and by letter. Tr. 109-10; CX-28. Given the length of time that has passed since the events at issue, DM's poor health, and the lack of detail in DM's letter, we do not find his hearsay statements to be reliable.

ensure that the information provided on the form is true and accurate."[81] Questions 14A(1)(a) and (1)(b) on the Form U4 asked very clearly if Basora had been charged with and pled *nolo contendere* to a felony. Basora, not DM, was responsible for maintaining the accuracy of Basora's registration application.[82] Thus, even if as Basora claimed, he told DM about his arrest, as a registered person, he had a duty to follow up with the firm's compliance department and ensure that his Form U4 disclosures were amended and updated.[83] He failed to do so.

Basora also stated that he was led by his criminal attorney to believe that he did not need to update his Form U4.[84] Basora contended that he followed the lawyer's advice and did not fully understand the *nolo contendere* plea he entered.[85] But Basora signed a document that clearly indicated he pled *nolo contendere*. The plea document actually used the words "*nolo contendere*," which are the same words used in the Form U4, and Basora admitted he understood he was charged with a felony.[86] Furthermore, Basora did not represent that he obtained advice from a securities lawyer, and he did disclose in any detail the information that he provided to the lawyer or the advice that he received. In any event, Basora should not need legal advice to answer questions 14A(1)(a) and (1)(b), which unambiguously asked if he had been charged with a felony and whether he pled guilty or *nolo contendere*. Basora offered no logical explanation for failing to amend his Form U4 to answer both questions affirmatively.[87] We find that, by failing to timely amend his Form U4, Basora violated Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (now FINRA Rule 1122), and FINRA Rules 1122 and 2010, as alleged in cause one.

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[81] *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *16 (Dec. 7, 2009) (citing *Guang Lu*, Exchange Act Release No. 51047, 2005 SEC LEXIS 117 (Jan. 14, 2005), *aff'd*, 179 F. App'x 702 (D.C. Cir. 2006)), *aff'd*, 671 F.3d 210 (2d Cir. 2012).

[82] *See Richard Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *22-23 (Oct. 20, 2011) (rejecting as a defense applicant's claimed reliance on his supervisors' advice that the Form U4 need not be amended and holding that "industry registrants 'must take responsibility for compliance and cannot be excused for lack of knowledge, understanding or appreciation of these requirements.'") (citing *Lu*, 2005 SEC LEXIS 117).

[83] *See Mathis*, 2009 SEC LEXIS 4376, at *28 ("[Applicant] cannot shift responsibility to comply with [FINRA's] rules to another senior person at the firm."); *Douglas J. Toth*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520, at *25 (July 1, 2008) ("[P]rimary responsibility for maintaining the accuracy of a Form U4 lies with the registered representative.").

[84] Basora testified:

> Understanding, you know, the industry that we're in, you know, I know how important my license was to me. So I told my lawyer that I cannot be found guilty for this because of my license, right. And what he advised me to do so that I do not jeopardize my license was to do exactly what he said to do, okay. So that's what I did. Tr. 24.

[85] Tr. 24-25.

[86] Tr. 44, 159; CX-27, at 9-10.

[87] *See Tucker*, 2012 SEC LEXIS 3496, at *36-37 (finding that applicant could not avoid responsibility for his false responses because the language of the Form U4 is unambiguous); *Audifferen*, 2008 SEC LEXIS 1740, at *35 (rejecting applicant's argument that he did not understand customer letter to be a "customer complaint" and therefore disclosable on the Form U4).

C. Basora's Failure to Timely Update His Form U4 Was Willful, and the Information He Neglected to Update Was Material

We further find that Basora's failure to update the Form U4 was willful and the information that he failed to keep accurate was material.[88] To find that Basora acted willfully, we need only find that he "voluntarily committed the acts that constituted the violation, not that [he] was aware of the rule he violated or that he acted with a culpable state of mind."[89]

Basora conceded that he was aware of his arrest, and that he signed a *nolo contendere* plea. "The requirement to amend the Form U4 is based in FINRA rules, and a registered representative is 'presumed to know and abide by FINRA Rules.'"[90] The Form U4's accompanying instructions advised that "[a]n individual is under a continuing obligation to amend and update information required by Form U4 as changes occur."[91] Questions 14A(1)(a) and (1)(b) on the Form U4 unambiguously asked if Basora had been charged with a felony and whether he pled guilty or *nolo contendere* to the charge. Basora even admitted that he was aware that the felony charge could have implications on his license to sell securities.[92] Furthermore, Basora filed two amendments to his Form U4 after his arrest, but did not update questions 14A(1)(a) and (1)(b) in either filing. If Basora was confused or misunderstood his obligations, he could have talked with his supervisor, individuals in the firm's compliance department, or FINRA. He did not. Basora was aware of his charge and plea, he knew of possible implications related to his registration, questions 14A(1)(a) and (1)(b) are straightforward and clear, and

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[88] Article III, Section 4 of FINRA's By-Laws states that a person is subject to disqualification from association with a FINRA member if such person is subject to any "statutory disqualification" as that term is defined in Section 3(a)(39) of the Exchange Act. Exchange Act Section 3(a)(39)(F) states that a person is subject to disqualification from association with a FINRA member if such person has willfully made or caused to be made in any application for membership any statement that was false or misleading with respect to any material fact. Our finding that Basora's failure to timely update his Form U4 was willful and the information he failed to update was material therefore subjects Basora to statutory disqualification from the securities industry. *See, e.g.*, *McCune*, 2016 SEC LEXIS 1026, at *13-23 (finding that applicant was statutorily disqualified for willfully failing to amend Form U4); *Amundsen*, 2013 SEC LEXIS 1148, at *37-41 (finding applicant was statutorily disqualified for willfully providing false material information and excluding information on Form U4).

[89] *Craig*, 2008 SEC LEXIS 2844, at *13; *see also McCune*, 2016 SEC LEXIS 1026, at *15 ("If [applicant] voluntarily committed the acts that constituted the violation, then he acted willfully."); *Tucker*, 2012 SEC LEXIS 3496, at *42 ("Tucker acted willfully by voluntarily supplying false answers . . . on the Forms U4"); *Mathis*, 2009 SEC LEXIS 4376, at *19 ("[I]t is not necessary for us to determine whether [respondent] was aware of the rule he violated or whether he acted with a culpable state of mind.").

[90] *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *21 (NAC Mar. 16, 2017) (citing *Dep't of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *23 (NAC Aug. 19, 2010)), *appeal docketed*, No. 3-17925 (SEC Apr. 11, 2017); *see also Neaton*, 2011 SEC LEXIS 3719, at *23 (rejecting reliance on supervisor for Form U4 disclosures and finding that registrants must take responsibility for compliance and cannot be excused for lack of knowledge or understanding of the requirements).

[91] Form U4 General Instructions, http://www.finra.org/sites/default/files/AppSupportDoc/p015111.pdf, at 1 (Rev. May 2009).

[92] Tr. 159-61.

Basora amended other Form U4 answers during this period. We find that Basora's failure to timely update his Form U4 was willful.[93]

We also find that Basora's arrest and *nolo contendere* plea were material. "In the context of Form U4 disclosures, a fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available."[94] Current and potential employers would want to know about Basora's history of drug possession or use and certainly would want to know of a statutorily disqualifying event such as a felony conviction. Indeed, FINRA member firm Freedom opened itself to potential liability for violations of FINRA's rules and the Exchange Act by allowing Basora to remain associated with it during a period when he was statutorily disqualified. Investors also would want to know that the person providing them with investment advice has a criminal conviction making him unqualified to work in the securities industry. We find that Basora's felony charge and *nolo contendere* plea were material.[95]

D. Basora Failed to Appear for On-the-Record Testimony on Three Occasions as Alleged in Cause Two

Cause two of the Complaint alleged that Basora failed to appear three times for on-the-record testimony requested pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

FINRA Rule 8210 provides FINRA staff with broad discretion to require associated persons to testify concerning any matter involved in a FINRA investigation, complaint,

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[93] *See McCune*, 2016 SEC LEXIS 1026, at *16 (finding willful respondent's failure to update Form U4 to disclose bankruptcy and liens of which respondent was aware); *Tucker*, 2012 SEC LEXIS 3496, at *42 (finding willful respondent's supplying false answers to judgments and liens questions on the Form U4 despite discussing judgments and liens with firm supervisors); *Mathis*, 2009 SEC LEXIS 4376, at *20 (finding willful respondent's failure to disclose tax lien he believed was only a "possible lien"); *Elgart*, 2017 FINRA Discip. LEXIS 9, at *21-22 (finding that respondent who knew of tax liens but failed to update his Form U4 to disclose them acted willfully); *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2007007151101, 2012 FINRA Discip. LEXIS 43, at *37 (NAC May 2, 2012) (finding that respondent who attempted to comply with the rules nonetheless acted willfully).

[94] *McCune*, 2016 SEC LEXIS 1026, at *21-22; *see also Tucker*, 2012 SEC LEXIS 3496, at *47 ("We have also deemed omitted facts material when they 'would have assumed actual significance in the deliberations of' the representative's employers, regulators, and investors.") (citing *Mathis*, 2009 SEC LEXIS 4376, at *31).

[95] *Cf. Neaton*, 2011 SEC LEXIS 3719, at *32 (finding state bar disciplinary action material because it would have alerted possible employers to respondent's history of defying professional rules and standards and engaging in dishonest activities); *Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *16 (July 17, 2009) (finding material the upgrade of a DUI to a felony because a felony conviction results in statutory disqualification); *Dep't of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *15 (NAC Dec. 18, 2009) (holding that criminal history is material); *Dep't of Enforcement v. Craig*, No. EA2004095901, 2007 FINRA Discip. LEXIS 16, at *12 (NAC Dec. 27, 2007) ("We have previously found that criminal history is material information."), *aff'd*, 2008 SEC LEXIS 2844; *Dep't of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at *14 (NAC May 3, 2005) (finding material failure to disclose the misdemeanor charge of wrongful taking of property); *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004) ("Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all the information that is reportable on the Form U4 is material.").

examination or proceeding.[96] As a registered person, Basora possessed an unequivocal duty to cooperate with FINRA, even if he failed to understand the importance of providing testimony as requested.[97]

The evidence unequivocally demonstrates that Basora received Enforcement's three requests for on-the-record testimony. Enforcement sent three letters requesting Basora's August 11, October 13, and October 25, 2016 testimony by certified and first-class mail delivered to Basora's CRD Address.[98] FINRA Rule 8210(d) deems a formerly registered person, such as Basora, to have received a request pursuant to Rule 8210 if Enforcement sent it to the person's last-known address as reflected in CRD.[99] Furthermore, Basora admitted that he received mail sent to the CRD Address.[100] The United States Postal Service delivered all the certified mailings and did not return the first-class mailings to Enforcement as undeliverable.[101] Enforcement also emailed its request for October 25, 2016 testimony, and Basora admitted to having received the email and Enforcement's request for October 13, 2016 testimony.[102] We find that Enforcement properly served Basora with its Rule 8210 requests, and he failed to appear on three occasions.[103]

Basora stated that he failed to appreciate the importance of appearing for testimony and that, on October 25, 2016, he decided that he did not want to proceed without counsel. Enforcement's requests, however, warned that "[r]efusing to appear for testimony . . . constitutes

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[96] *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *29 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015); *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *17 (NAC Dec. 12, 2012).

[97] *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (stating that associated persons "may not ignore NASD inquiries . . . nor take it upon themselves to determine whether information is material to an NASD investigation of their conduct"); *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *47 (NAC July 18, 2014) ("Associated persons therefore must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material."); *Evansen*, 2014 FINRA Discip. LEXIS 10, at *28 (finding that respondent possessed an unequivocal duty to appear and testify even if he viewed FINRA's requests as superfluous in light of his earlier responses).

[98] CX-1; CX-6; CX-8; CX-10.

[99] *See Jonathan Roth Ellis*, Exchange Act Release No. 80312, 2017 SEC LEXIS 970, at *12-13 (Mar. 24, 2017) (holding that formerly registered individual is deemed to have received Rule 8210 request for information and documents sent to last address of record as indicated in CRD); *Evansen*, 2015 SEC LEXIS 3080, at *29-30 (same). A formerly registered person such as Basora was obligated to keep his CRD address current. *See* NASD Notice to Members 97-31, 1997 NASD LEXIS 35, at *2 (May 1997) (formerly registered persons must notify FINRA of changes to their current addresses for at least two years after they end that association and may face disciplinary action for failing to respond to requests for information that are mailed to the last known address). A formerly registered person's failure to update his address in CRD is not a defense to a failure to respond to a Rule 8210 request. *Gilbert Torres Martinez*, Exchange Act Release No. 69405, 2013 SEC LEXIS 1147, at *15 (Apr. 18, 2013).

[100] Tr. 20-21, 53-54, 56.

[101] CX-6, at 12; CX-8, at 12-13; CX-10, at 4.

[102] Tr. 60, 65-67.

[103] Tr. 54, 59, 69-70, 75, 125-26, 128; CX-11; CX-12; CX-14.

a violation of FINRA Rule 8210 and may expose you to sanctions, including a permanent bar from the securities industry."[104] The requests also advised Basora that he could be represented by counsel during his testimony and that he could consult with his attorney during breaks and between questions.[105] Basora had plenty of opportunity to retain counsel and fully consider the consequences of not appearing. Enforcement excused two other instances of Basora's failing to appear and on October 25, 2016, gave him the opportunity to find an attorney to appear with him that day.[106] Basora's claim that he was unable to retain counsel that day does not excuse his failure to appear. Member firms and associated persons may not impose conditions on their willingness to testify, and Basora could not put off Enforcement until he retained counsel.[107]

We find that Basora failed to appear for on-the-record testimony on three occasions, in violation of FINRA Rules 8210 and 2010.

IV. Sanctions

For failing to appear for testimony three times, in violation of FINRA Rules 8210 and 2010, we bar Basora from associating with any member firm in any capacity. In light of the bar, we do not impose additional sanctions for Basora's failure to timely update his Form U4 disclosures, in violation of Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (now FINRA Rule 1122), and FINRA Rules 1122 and 2010. If we had not barred Basora, we would have imposed a $10,000 fine and two-year suspension from associating with any member firm in any capacity.

A. Cause One – Willful Failure to Timely Update Form U4

FINRA's Sanction Guidelines for failing to timely update a Form U4 recommend that adjudicators consider several factors applicable specifically to this violation.[108] The Guidelines suggest consideration of the nature of the information at issue, the duration of the delinquency, whether the failure to disclose delayed a regulatory investigation, and whether the failure resulted in a statutorily disqualified person associating improperly with a firm.[109] Here, the

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[104] CX-6, at 2; CX-8, at 2; CX-10, at 2.

[105] CX-6, at 2; CX-8, at 2; CX-10, at 2.

[106] Tr. 57, 64-67, 83-85; CX-18.

[107] *See Toni Valentino*, Exchange Act Release No. 49255, 2004 SEC LEXIS 330, at *11 (Feb. 13, 2004) ("members and associated persons may not impose conditions, such as the location of an interview, under which they will respond to [FINRA] requests for information"); *Dep't of Enforcement v. Fawcett*, No. C9A040024, 2007 NASD Discip. LEXIS 2, at *25 (NAC Jan. 8, 2007) ("Associated persons also are not free to determine the appropriate time to respond to staff's requests for information and are not entitled as a matter of right to adjourn the dates set for their Rule 8210 testimony.") (citing *Dep't of Enforcement v. Levitov*, No. CAF980025, 1999 NASD Discip. LEXIS 30, at *12-13 (NAC Nov. 1, 1999)).

[108] FINRA Sanction Guidelines (2017) at 71, http://www.finra.org/industry/sanction-guidelines.

[109] *Id.* at 7-8 (Principal Consideration Nos. 1 (nature and significance of information at issue), 4 (the duration of the delinquency), 5 (whether the failure . . . timely to disclose delayed any regulatory investigation), 7 (whether the failure resulted in a statutorily disqualified individual . . . remaining associated with a firm); *see also id.* at 7

information that Basora failed to disclose caused him to be statutorily disqualified from associating with FINRA members. Thus, for more than three years, Basora worked in the securities industry while he was statutorily disqualified, and FINRA's investigation of Basora's multiple failures to update his Form U4 was delayed because Enforcement remained unaware of the deficiencies.[110] Furthermore, because Basora failed to update his Form U4, he was allowed to continue to work and earn commissions while not legally qualified to do so. He therefore benefitted financially from his misconduct.[111] We consider these aggravating factors to be significant.

Basora contended that he did not update his Form U4 because of advice he received from his criminal attorney. FINRA's Sanction Guidelines advise that we may consider whether a respondent demonstrated reasonable reliance on competent legal advice.[112] "To constitute mitigation, however, the claim must have sufficient content and sufficient supporting evidence."[113] For us to find Basora's claimed reliance on counsel mitigating, Basora would have to prove that he made full and complete disclosure to competent legal counsel familiar with the requirements for maintaining an accurate Form U4, sought advice related specifically to disclosing felony charges and pleas on Forms U4, obtained that advice, and then reasonably relied on it.[114] Basora produced none of this evidence and, in fact, claimed only to have had a brief conversation with a criminal attorney about which he provided no detail. We reject Basora's purported reliance on counsel as a mitigating factor.

The Form U4 is "critical to the effectiveness of the screening process used to determine who may enter (and remain in) the [securities] industry. It ultimately serves as a means of protecting the investing public."[115] In light of the importance of Form U4 disclosures, we find that Basora's violations warrant a $10,000 fine and two-year suspension. In light of our determination to bar Basora for violations under cause two, however, we do not impose these additional sanctions.

(Principal Consideration No. 9) (whether the respondent engaged in the misconduct over an extended period of time).

[110] In addition to Basora's failures to disclose his felony arrest and *nolo contendere* plea, FINRA commenced an investigation of his failures to disclose three bankruptcy filings and a federal tax lien. Tr. 100-02; CX-1, at 16-20.

[111] Guidelines at 8 (Principal Consideration No. 16) (whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

[112] *Id.* at 7 (Principal Consideration No. 7) (whether the respondent demonstrated reasonable reliance on competent legal or accounting advice).

[113] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *38 (Nov. 14, 2008).

[114] *See Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *52 (Sept. 13, 2010) ("The [legal] advice must be based on full and complete disclosure, and the respondent asserting reliance must produce 'actual advice from an actual lawyer.'"); *Berger*, 2008 SEC LEXIS 2977, at *43 (rejecting reliance on counsel as mitigating of sanctions where respondent failed to show full disclosure to the attorney and the content of the attorney's advice).

[115] *Amundsen*, 2013 SEC LEXIS 1148, at *24.

B. Cause Two – Failure to Appear Three Times for On-the-Record Testimony

FINRA's Sanction Guidelines for failing to appear for on-the-record testimony suggest, for a complete failure to respond, that we consider the importance of the information requested as viewed from FINRA's perspective.[116] In addition to Basora's failure to timely update his Form U4 to disclose a felony charge and his plea, Enforcement had reason to believe that Basora had not disclosed three bankruptcies related to real estate foreclosures and a federal tax lien. Furthermore, Basora associated with a firm for several years while statutorily disqualified. All of these matters would have been covered in Basora's testimony, and Enforcement would have had the opportunity to fully investigate all possible rule violations. Given the nature and extent of Basora's disclosure failures, we find this factor aggravating.

We also find aggravating Basora's pattern of evading his responsibilities under Rule 8210. Enforcement requested Basora's appearance five times. Two of the appearances were excused absences. Enforcement gave him the opportunity to appear three more times, yet he failed to appear. We find the ongoing nature and pattern of Basora's misconduct aggravating.[117]

The fact that Basora acted intentionally is aggravating. The evidence firmly establishes that Basora received notice of the three requests at issue. His decision not to appear was conscious and premeditated, and we find this aggravating.[118]

Finally, we consider the importance of FINRA Rule 8210 to FINRA's regulatory mandate. "Failure to comply [with Rule 8210 requests] is a serious violation justifying stringent sanctions because it subverts [FINRA's] ability to execute its regulatory functions."[119] FINRA does not have subpoena power and therefore must rely on Rule 8210 to obtain information to conduct its investigations.[120] Given the significance of Rule 8210 to FINRA's investigations, the Sanction Guidelines state that where, as here, the individual respondent "did not respond in any manner, a bar should be standard."[121] We find no mitigating factors present here and see no reason to deviate from the standard sanctions. We therefore bar Basora from associating with any member firm in any capacity for violating FINRA Rules 8210 and 2010 as alleged in cause two.

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[116] Guidelines at 33 (Principal Consideration No. 1) (importance of the information requested as viewed from FINRA's perspective).

[117] *Id.* at 7 (Principal Consideration No. 8) (whether the respondent engaged in . . . a pattern of misconduct).

[118] *Id.* at 8 (Principal Consideration No. 13) (whether the respondent's misconduct was the result of an intentional act . . .).

[119] *Elliot M. Hershberg*, Exchange Act Release No. 53145, 2006 SEC LEXIS 99, at *10 (Jan. 19, 2006).

[120] *See Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *31 (Aug. 22, 2008) ("A complete failure to respond to a request for information . . . renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests."); *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *15 (NAC Mar. 9, 2015) ("Because FINRA does not have subpoena power, it 'must rely on [FINRA] Rule 8210 to obtain information . . . necessary to carry out its investigations and fulfill its regulatory mandate.'") (citing *CMG Inst. Trading*, 2009 SEC LEXIS 215, at *15).

[121] Guidelines at 33.

V. Order

Respondent Eddie Basora, Jr. is barred from associating with any member firm in any capacity for failing to appear on three occasions for on-the-record testimony, in violation of FINRA Rules 8210 and 2010, as alleged in cause two. We also find that Basora failed to timely amend and update his Form U4 to disclose a felony charge and *nolo contedere* plea, in violation of Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (now FINRA Rule 1122), and FINRA Rules 1122 and 2010, as alleged in cause one. In light of the bar imposed, we have not imposed additional sanctions for Basora's violations under cause one. The bar shall become effective immediately if this decision becomes FINRA's final action in this disciplinary proceeding.[122] Basora is ordered to pay the costs of the hearing in the amount of $2,152.11, which includes a $750 administrative fee and the cost of the hearing transcript. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

Carla Carloni
Hearing Officer
For the Hearing Panel

Copies to: Eddie Basora, Jr. *(via first-class mail and overnight courier)*
Rebecca Segrest, Esq. *(via email and first-class mail)*
Penelope Blackwell, Esq. *(via email)*
Jeffrey D. Pariser, Esq. (*via email*)

[122] The Hearing Panel considered and rejected without discussion all other arguments by the parties.