

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

James Dozier Whelan (CRD No. 872806),

Respondent.

DISCIPLINARY PROCEEDING
No. 2014041510702

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. While registered with FINRA through a member firm, respondent James Dozier Whelan willfully failed to amend his Uniform Application for Securities Industry Registration ("Form U4") to disclose twelve tax liens, five filed by the Internal Revenue Service ("IRS") and seven filed by the State of Maryland Comptroller's Office ("State of Maryland"). The liens against Whelan were filed between November 2005 and February 2013 and total approximately \$835,000.
2. This conduct violated (i) Article V, Section 2(c) of the FINRA By-Laws, (ii) NASD Interpretive Material ("IM") 1001-1 (for the conduct on or before August 16, 2009) and FINRA Rule 1122 (for the conduct on or after August 17, 2009), and (iii) NASD Conduct Rule 2110 (for the conduct on or before December 14, 2008) and FINRA Rule 2010 (for the conduct on or after December 15, 2008).

RESPONDENT AND JURISDICTION

3. Whelan first became registered with FINRA's predecessor in October 1979.
4. In March 1985, Whelan became registered – first with FINRA's predecessor and then with FINRA – as a General Securities Representative through an association with a broker-dealer at a firm that he founded. In February 1986, Whelan also became registered as a General Securities Principal, and in February 1991, Whelan became registered as an Introducing Broker-Dealer Financial and Operations Principal. He was registered in all of those capacities through the same firm through March 1998 and he also served as its Chief Executive Officer during this time period. The firm's Form BDW was approved by the SEC in August 1998.
5. From March 1998 to the present, Whelan has been registered with FINRA through an association with Capitol Securities Management, Inc. (BD No. 14169) ("Capitol") as a General Securities Representative, a General Securities Principal, and an Introducing Broker-Dealer Financial and Operations Principal. In light of his current registration with a FINRA member firm, Whelan is subject to FINRA jurisdiction pursuant to Article V of FINRA's By-Laws.

CAUSE OF ACTION

Willful Failure to Amend Form U4 to Disclose Material Information (Article V, Section 2(c) of the FINRA By-Laws, NASD IM-1000-1, NASD Conduct Rule 2110, and FINRA Rules 1122 and 2010)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. 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.”

8. NASD IM-1000-1 provided, “The filing with the Association of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.”
9. FINRA Rule 1122, which superseded NASD IM-1000-1 effective August 17, 2009, 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.”
10. NASD Conduct Rule 2110 required the observance of high standards of commercial honor and just and equitable principles of trade.
11. FINRA Rule 2010, which superseded NASD Conduct Rule 2110 effective December 15, 2008, requires the observance of high standards of commercial honor and just and equitable principles of trade.
12. At all times relevant to this Complaint, Question 14M of the Form U4 asked: “Do you have any unsatisfied judgments or liens against you?” If the answer is yes, the registered person is required to provide details about the lien or judgment.

13. Between November 2005 and February 2013, federal and state tax authorities filed a dozen liens against Whelan, as follows:

- a. On or about November 2, 2005, the IRS recorded a tax lien against Whelan in the amount of \$328,770.27.
- b. On or about April 12, 2006, the IRS recorded a tax lien against Whelan in the amount of \$89,011.
- c. On or about January 4, 2007, the IRS recorded a tax lien against Whelan in the amount of \$37,223.
- d. On or about June 1, 2007, the State of Maryland recorded a tax lien against Whelan in the amount of \$30,628.
- e. On or about September 4, 2008, the State of Maryland recorded a tax lien against Whelan in the amount of \$41,059.
- f. On or about September 5, 2008, the State of Maryland recorded a tax lien against Whelan in the amount of \$34,155.
- g. On or about January 25, 2010, the State of Maryland recorded a tax lien against Whelan in the amount of \$9,409.
- h. On or about September 15, 2010, the State of Maryland recorded a tax lien against Whelan in the amount of \$8,400.
- i. On or about October 4, 2010, the IRS recorded a tax lien against Whelan in the amount of \$154,304.

- j. On or about October 19, 2010, the State of Maryland recorded a lien against Whelan in the amount of \$42,704.
 - k. On or about January 28, 2011, the State of Maryland recorded a tax lien against Whelan in the amount of \$8,126.
 - l. On or about February 5, 2013, the IRS recorded a tax lien against Whelan in the amount of \$52,558.
14. As of May 2014, when Whelan first updated his Form U4 to disclose these liens, all of the liens remained unsatisfied.
15. Whelan received notice of each of these federal and state tax liens on or about the dates that each was recorded.
16. Despite filing eight amendments to his Form U4 subsequent to November 2, 2005 (the filing date of the earliest tax lien), Whelan failed to disclose the twelve tax liens on his Form U4 until May 5, 2014, after he was asked by FINRA staff to complete a Personal Activity Questionnaire, which included questions about outstanding liens.
17. The twelve tax liens constituted material information that Whelan was obligated to disclose on his Form U4.
18. Based on the foregoing, Whelan willfully failed to timely amend his Form U4 to disclose the twelve tax liens in violation of Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (for the conduct on or before August 16, 2009), FINRA Rule 1122 (for the conduct on or after August 17, 2009), NASD Conduct Rule 2110 (for the conduct on or before December 14, 2008), and FINRA Rule 2010 (for the conduct on or after December 15, 2008).

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Whelan 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 Whelan 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 Whelan's conduct as alleged 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: October 19, 2015



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