

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

Department of Enforcement,

Complainant,

v.

James Dozier Whelan (CRD No. 872806),

Respondent.

DISCIPLINARY PROCEEDING  
NO. 2014041510702

HEARING OFFICER: DW

**ORDER ACCEPTING OFFER OF  
SETTLEMENT**

Date: May 20, 2016

**INTRODUCTION**

Disciplinary Proceeding No. 2014041510701 was filed on October 19, 2015, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent James Dozier Whelan submitted an Offer of Settlement (Offer) to Complainant dated May 13, 2016. 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 (as amended by the Offer of Settlement), 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 (as amended by the Offer of Settlement), 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**

Whelan first became registered with FINRA's predecessor in October 1979. In March 1985, Whelan became registered – first with FINRA's predecessor and then with FINRA – as a General Securities Representative through an association with Dozier-Whelan Securities, Inc. (BD No. 15958) ("Dozier-Whelan"). 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 Dozier-Whelan through March 1998. Dozier-Whelan was founded by Whelan, who served as its Chief Executive Officer until the firm's Form BDW was approved by the SEC in August 1998.

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. Whelan is currently associated with Capitol and remains subject to FINRA jurisdiction.

### **FINDINGS AND CONCLUSIONS**

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

#### **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).

### **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)**

3. The Department realleges and incorporates by reference paragraphs 1 through 2 above.
4. 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.”
5. 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.”

6. 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.”
7. NASD Conduct Rule 2110 required the observance of high standards of commercial honor and just and equitable principles of trade.
8. 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.
9. 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.
10. 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.
11. As of May 2014, when Whelan first updated his Form U4 to disclose these liens, all of the liens remained unsatisfied.
12. Whelan received notice of each of these federal and state tax liens on or about the dates that each was recorded.
13. 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.

14. The twelve tax liens constituted material information that Whelan was obligated to disclose on his Form U4.

15. 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).

Based on the foregoing, Respondent willfully violated Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (for the conduct on or before August 16, 2009), and FINRA Rule 1122 (for the conduct on or after August 17, 2009), and violated 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).

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:

- Suspended for 60-calendar days from associating in any capacity with any FINRA member firm; and
- Fined in the amount of \$5,000.

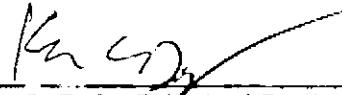
Respondent agrees to pay the monetary sanction upon notice that this Offer has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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



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