

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEPHEN C. CARVER
(CRD No. 2230161),

Respondent.

Disciplinary Proceeding
No. 2017056071301

Hearing Officer–JP

DEFAULT DECISION

May 13, 2019

Carver willfully failed to timely disclose three tax liens on his Form U4 and falsely attested to his employer that he had made required disclosures on his Form U4. For these violations, Carver is suspended from associating with any FINRA member firm in any capacity for seven months and fined \$7,500.

Appearances

For the Complainant: Suzanne H. Bertolett, Esq., Tino Lisella, Esq., and David B. Klafter, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

The Department of Enforcement filed a two-cause Complaint against Stephen C. Carver (“Carver”). Cause one charges that Carver willfully failed to timely disclose three tax liens on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”), in violation of Article V, Section 2(c) of FINRA By-Laws and FINRA Rules 1122 and 2010. Cause two charges Carver with falsely attesting on an annual compliance questionnaire that he was in compliance with Form U4 disclosure requirements, in violation of FINRA Rule 2010.

Enforcement properly served Carver with two Notices of the Complaint and the Complaint. Carver did not file an Answer to the Complaint. On March 8, 2019, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Suzanne H. Bertolett (“Decl.”) and six exhibits (CX-1 through CX-6). Carver did not respond to the Default Motion.

For the reasons set forth below, I grant Enforcement's Default Motion and deem the facts alleged in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Carver's Background

Carver entered the securities industry in 1992, when he became associated with a FINRA member firm as a general securities representative.¹ Carver was associated with Cetera Advisors LLC ("Cetera") from November 2010 to September 19, 2017, when Cetera filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating Carver's registration.² Carver was associated with another FINRA member firm from November 2017 until December 31, 2018. Carver is not currently associated with a FINRA member firm.³

B. FINRA's Jurisdiction

Although Carver is no longer in the securities industry, FINRA retains jurisdiction over Carver pursuant to Article V, Section 4(a) of FINRA's By-Laws for two reasons. First, Enforcement filed the Complaint within two years after the effective date of termination of Carver's registration with a FINRA member firm on December 31, 2018. Second, the Complaint charges him with misconduct that occurred while he was registered with Cetera, a FINRA member firm.

C. Origin of the Investigation

This matter originated from the investigation of a Senior Helpline complaint against Carver. During the investigation, FINRA staff discovered that Carver failed to timely disclose tax liens on his Form U4.⁴

D. Carver's Default

Enforcement served Carver with the First and Second Notices of Complaint, and Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the First Notice of Complaint on January 3, 2019, and the Second Notice of Complaint on February 1, 2019.⁵

¹ Complaint ("Compl.") ¶ 3; CX-1, at 8.

² Compl. ¶ 3; CX-1, at 2.

³ Decl. ¶ 5; CX-1, at 2.

⁴ Decl. ¶ 4.

⁵ Decl. ¶¶ 10, 11, 14; CX-2.

Carver's counsel agreed to accept service of the Complaint.⁶ In each case, Enforcement served Carver's counsel by certified mail, first-class mail, and email.⁷

Pursuant to FINRA Rule 9215, Carver was required to file an Answer to the Complaint by February 19, 2019. Carver failed to file an Answer or otherwise respond to the Complaint. Thus, Carver is in default.

On February 20, 2019, I issued an Order instructing Enforcement to file a Default Motion. On March 8, 2019, Enforcement filed a Default Motion. Carver did not respond to the Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion and deem the allegations in the Complaint admitted.⁸

E. Carver Willfully Failed to Timely Amend His Form U4 to Disclose Three IRS Liens

Cause one charges Carver with violating Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to timely amend his Form U4 to report three IRS tax liens filed in 2013 and 2015 and totaling approximately \$92,000.

Article V, Section 2, of the FINRA By-Laws requires that associated persons applying for registration with FINRA provide "such ... reasonable information with respect to the applicant as [FINRA] may require" and further states that the application "shall be kept current at all times by supplementary amendments ... filed ... not later than 30 days after learning of the facts or circumstances giving rise to the amendment." To implement this provision, FINRA Rule 1122 provides that no member or associated person "shall file with FINRA information ... 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." A violation of FINRA Rule 1122 is a violation of FINRA Rule 2010, which requires registered representatives to observe high standards of commercial honor and just and equitable principles of trade.

The Complaint charges Carver with failing to truthfully answer Question 14M on the Form U4, which specifically asks registered persons, "Do you have any unsatisfied judgments or liens against you?" Because Carver had three tax liens, he was required to answer "yes" to this question, but he did not.

According to the Complaint, the Internal Revenue Service ("IRS") recorded three income tax liens in (i) March 2013, for \$24,980.38, (ii) August 2013, for \$21,926.81, and (iii) May 2015, for \$45,013.45. The liens were for unpaid income taxes for 2010, 2011, and 2013.⁹ The IRS

⁶ CX-2.

⁷ Decl. ¶¶ 11, 14. The First and Second Notices of Complaint were delivered to Carver's counsel on January 7, 2019, and February 5, 2019, respectively. Decl. ¶¶ 12, 15; CX-3; CX-4.

⁸ Carver may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

⁹ Compl. ¶¶ 6, 10, 14.

served Carver with notice of the liens via certified mail on or about the day the IRS filed the liens.¹⁰ Nonetheless, Carver did not disclose the liens on his Form U4 until November 15, 2016, after FINRA had notified the Firm of the liens.¹¹ Carver has not satisfied any of the liens.¹²

Carver knew that tax liens were reportable events because he had reported tax liens on his Form U4 in the past. In 2010, FINRA sent him a Cautionary Action Letter for failing to timely disclose IRS liens totaling about \$100,000.¹³ In June 2015, Cetera told Carver the IRS had filed a \$7,792 tax lien in May 2011.¹⁴ FINRA had notified Cetera about the tax lien. On June 23, 2015, Carver amended his Form U4 to disclose the May 2011 lien.¹⁵ Despite disclosing the May 2011 lien in June 2015, Carver did not disclose the three other liens until November 2016.

I now turn to whether Carver is statutorily disqualified as a result of making untimely disclosures on his Form U4.

F. Carver is Subject to Statutory Disqualification

Under Article III, Section 3(b) of FINRA’s By-Laws, a “statutorily disqualified” person cannot become or remain associated with a FINRA member firm unless FINRA has approved the association. A person is subject to statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (“Exchange Act”) if the person:

willfully made or caused to be made in any application . . . to become associated with a member of . . . a self-regulatory organization . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state . . . any material fact which is required to be stated therein.

Thus, a registered person is subject to statutory disqualification for failing to update a Form U4 if the failure was willful and the omitted information was material. As discussed below, I find that Carver acted willfully and the tax liens were material information.

1. Carver Acted Willfully

Based on the allegations of the Complaint, I find that Carver knew about the liens but failed to disclose them. In the past, he received a Cautionary Action Letter informing him of the requirement to disclose tax liens. The IRS sent him notices of the liens. Moreover, Cetera told him in June 2015 to disclose a \$7,792 tax lien when Carver knew of the existence of other three

¹⁰ Compl. ¶¶ 8, 12, 16.

¹¹ Compl. ¶ 38.

¹² Compl. ¶¶ 9, 13, 17.

¹³ Compl. ¶ 37; CX-5.

¹⁴ CX-6.

¹⁵ Compl. ¶ 18.

liens. “It has been uniformly held that willfully means intentionally committing the act which constitutes the violation.”¹⁶ I therefore find that Carver acted willfully by not timely disclosing the liens.

2. The Information about Carver’s Liens Was Material

The National Adjudicatory Council (“NAC”) has held that “essentially all the information that is reportable on the Form U4 is material.”¹⁷ Tax liens have been determined to be material information that must be reported on a Form U4. Unsatisfied liens and judgments in particular are significant because they raise concerns about whether a registered representative can responsibly manage his own financial affairs. Ultimately, they may cast doubt on a person’s ability to provide trustworthy financial advice and services to investors who rely on that person to act on their behalf as a securities industry professional. I therefore find that the three tax liens were material information.

3. Conclusion

I find that Carver willfully violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 to disclose the three tax liens. Because Carver acted willfully and the omitted information was material, he is subject to statutory disqualification.

G. Carver Made a False Attestation to His Firm

Cause two charges that on February 2, 2016, Carver falsely represented to his Firm on an annual compliance questionnaire that he was in compliance with Form U4 disclosure requirements, in violation of FINRA Rule 2010. Cetera’s compliance questionnaire required Carver to acknowledge, among other things, that he had “an ongoing obligation to immediately amend [his] Form U4 through the Firm” to disclose changes that include liens.¹⁸ Despite being aware of the three IRS tax liens, Carver falsely affirmed to Cetera that he had no liens to disclose on his Form U4.¹⁹

Carver’s false answer was inconsistent with just and equitable principles of trade.²⁰ A registered representative’s failure to disclose material information to his firm violates FINRA Rule 2010, and calls into question the registered representative’s “ability to comply with

¹⁶ *Wonsover v. SEC*, 205 F.3d 408, 413 (D.C. Cir. 2000).

¹⁷ *Dep’t of Enforcement v. Dratel Group, Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *16-17 (NAC May 6, 2015) (finding that federal and state tax liens are material information that must be disclosed on a Form U4).

¹⁸ Compl. ¶¶ 20-21.

¹⁹ *Id.*

²⁰ *Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *17-18 (Oct. 31, 2018) (failing to disclose tax liens and bankruptcy filing on firm annual compliance questionnaire violates FINRA Rule 2010).

regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public.”²¹

Accordingly, I find that Carver violated FINRA Rule 2010 by falsely attesting on an annual compliance questionnaire that he complied with FINRA’s Form U4 disclosure requirements.

III. Sanctions

For failing to timely disclose information on a Form U4, FINRA’s Sanction Guidelines (“Guidelines”) instruct an adjudicator to consider a fine of \$2,500 to \$39,000. Where aggravating factors are present, an adjudicator should consider suspending an individual in any or all capacities for a period of 10 business days to six months. The Guidelines further suggest that where aggravating factors predominate, the adjudicator should consider a suspension in any or all capacities longer than six months and up to two years or, where a respondent intended to conceal information or mislead, a bar.²²

There is no Guideline that specifically addresses making false statements to an employer. The Guidelines for recordkeeping violations and the falsification of records are analogous because Carver’s failure to disclose the liens on his annual questionnaire caused Cetera to maintain false books and records.

For recordkeeping violations, the Guidelines suggest a fine between \$1,000 to \$16,000. The Guidelines further suggest that adjudicators consider suspending the responsible individual in any or all capacities for a period of 10 business days to three months.²³ Where aggravating factors predominate, adjudicators should consider a fine of \$10,000 to \$155,000. The Guidelines instruct adjudicators to consider the nature and materiality of the inaccurate or missing information.

For falsifying records, the Guidelines suggest a fine between from \$5,000 to \$11,000. The Guidelines further suggest that adjudicators consider suspending the respondent for a period of ten business days to six months.²⁴

²¹ *Dep’t of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *30 (NAC Feb. 24, 2011) (quoting *Dep’t of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *9-10 (NAC May 7, 2003)).

²² Sanction Guidelines at 71 (2019), <http://www.finra.org/industry/sanction-guidelines>.

²³ Guidelines at 29.

²⁴ Guidelines at 37.

I find that Carver's failure to disclose the tax liens on his Form U4 and his false statement to his Firm are related. I therefore impose a unitary sanction because the violations stem from Carver's willful failure to comply with his disclosure obligations.²⁵

In determining sanctions, I considered the following aggravating factors.²⁶ By failing to disclose the liens, Carver deprived investors of knowing about three tax liens totaling approximately \$92,000. Such information might lead a potential investor to choose not to entrust Carver with the investor's investments.²⁷ The information reported on the Form U4 can serve as an early warning mechanism, identifying individuals with troubled pasts or suspect financial histories. As the Securities Exchange Commission states, the information reported in the Form U4 "cannot be overstated."²⁸

Carver acted intentionally in concealing the liens. He misled his Firm.²⁹ He also intentionally failed to disclose the three tax liens even after the Firm told him in June 2015 to disclose a separate \$7,792 tax lien. Carver did not amend his Form U4 to disclose the three liens until November 15, 2016, three years and eight months after the oldest of the three liens and a year and half after the most recent lien.

I find no mitigating circumstances that warrant a reduced suspension or fine. After weighing the facts and circumstances, I find it appropriately remedial to suspend Carver from associating with any member firm in any capacity for seven months and to impose a \$7,500 fine for willfully failing to timely amend his Form U4 to disclose three tax liens and for making a false statement to Cetera on an annual compliance questionnaire. Because Carver's failure to timely disclose the liens was willful, and the information about his tax liens is material, Carver is subject to statutory disqualification.

IV. Order

Stephen C. Carver violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to timely disclose three tax liens on his Form U4. He also violated FINRA Rule 2010 by falsely attesting to his Firm on an annual questionnaire that he made all required disclosures and that he complied with FINRA's Form U4 disclosure

²⁵ See *Dep't of Enforcement v. Riemer*, 2017 FINRA Discip. LEXIS 38, at *3-4 (imposing a unitary sanction for failing to disclose tax liens and bankruptcy on Form U4 and making false compliance attestations to firm); see also *Dep't of Market Regulation v. Naby*, No. 20120320803-01, 2017 FINRA Discip. LEXIS 27, at *28 (NAC July 24, 2017) (holding that a unitary sanction was appropriate because respondent's violations resulted from the same course of conduct).

²⁶ Enforcement argues that the 2010 Cautionary Action Letter for failure to disclose tax liens on Carver's Form U4 is an aggravating factor. See Default Motion, at 14-15; CX-5; CX-6. The Guidelines, however, provide that Cautionary Action Letters are informal actions and are not included for purposes of determining sanctions. See Guidelines at 9.


²⁷ Guidelines at 71.

²⁸ *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012).

²⁹ Guidelines at 71.

requirements. For these violations, Carver is suspended from associating with any FINRA member firm in any capacity for seven months and fined \$7,500.

If this decision becomes FINRA's final disciplinary action, the suspension shall become effective at the opening of business on June 17, 2019. The fine shall be due on a date set by FINRA, but not sooner than 30 days after this Decision becomes FINRA's final action.


Jeffrey Pariser
Hearing Officer

Copies to:

Stephen C. Carver (via overnight courier and first-class mail)
Kevin F. Sullivan, Esq. (via first-class mail and email)
Suzanne H. Bertolett, Esq. (via email and first-class mail)
Tino Lisella, Esq. (via email)
David B. Klafter, Esq. (via email)
Lara C. Thyagarajan, Esq. (via email)