

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHRISTOPHER CHARLES SCHAEFFER
(CRD No. 1483859),

Respondent.

Disciplinary Proceeding
No. 2016049603001

Hearing Officer–MC

DEFAULT DECISION

October 6, 2017

Respondent is suspended from associating with any FINRA member firm in any capacity for nine months for willfully failing to update his Form U4. Respondent’s willful violation subjects him to statutory disqualification.

Appearances

For the Complainant: Matthew Minerva, Esq., Samuel Barkin, Esq., and Lara C. Thyagarajan, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance by or on behalf of Christopher Charles Schaeffer.

DECISION

I. Introduction

On April 5, 2017, the Department of Enforcement filed a one-cause Complaint with FINRA’s Office of Hearing Officers (“OHO”) against Respondent Christopher Charles Schaeffer. The Complaint alleges that Schaeffer willfully failed to timely update his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose a personal bankruptcy in violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010.

On May 2, 2017, Schaeffer filed an Answer and Request for Hearing. He appeared for a May 10, 2017 telephonic pre-hearing conference. On August 4, 2017, I convened a second telephonic pre-hearing conference. OHO served Schaeffer with advance notice of the pre-hearing conference, but he did not participate. I thereafter ordered Schaeffer to appear by telephone at a pre-hearing conference on August 10, 2017, to demonstrate good cause why he should not be

held in default. On August 4, 2017, Schaeffer notified OHO by email that he declined to participate in the proceeding.

On September 5, 2017, Enforcement filed a Motion for Entry of Default Decision supported by a memorandum of law, the declaration of Matthew Minerva, and sixteen exhibits.¹ Schaeffer did not respond to the motion.

For the reasons set forth below, I find Schaeffer in default, grant Enforcement's Default Motion, and deem the allegations of the Complaint admitted, pursuant to FINRA Rules 9241(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Schaeffer's Background and FINRA's Jurisdiction

Schaeffer first entered the securities industry in May 1986 and registered with FINRA as a general securities representative through his association with a FINRA member firm. He remained at that firm until 1989. Between 1989 and 2006, Schaeffer associated and registered with five other FINRA member firms.² In April 2006, Schaeffer joined Chelsea Financial Services ("Chelsea") and remained there until July 28, 2017. Chelsea filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on August 8, 2017, disclosing that Schaeffer had voluntarily terminated his association with the firm.³

FINRA has jurisdiction in this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because the Complaint charges Schaeffer with misconduct committed while he was associated with a FINRA member firm, and Enforcement filed the Complaint while he was registered with that firm.⁴

B. Origin of the Proceeding

Enforcement began its investigation of Schaeffer in March 2016, in connection with a 2016 Cycle examination of Chelsea. After discovering that he failed to disclose a February 18, 2015 bankruptcy filing on his Form U4 until March 11, 2016,⁵ Enforcement staff investigated Schaeffer's delay in disclosing the bankruptcy, leading to the filing of the Complaint.

¹ In this decision, Enforcement's exhibits are referenced as CX-1 through CX-16.

² Declaration of Matthew Minerva in Support of Motion for Entry of Default Decision and Request for Sanctions ("Decl.") ¶ 4; CX-1.

³ Decl. ¶ 5; CX-2, at 2.

⁴ Decl. ¶ 7; CX-1.

⁵ Decl. ¶ 8; CX-3; CX-16, at 13; CX-7, at 12.

C. Schaeffer's Default

On April 5, 2017, Enforcement served Schaeffer with the Complaint and Notice of Complaint in accordance with FINRA Rules 9131 and 9134.⁶ On May 2, 2017, Schaeffer filed his Answer and Request for Hearing with OHO.⁷ The parties participated in an initial pre-hearing conference on May 10, 2017, after which Enforcement issued a post-complaint FINRA Rule 8210 request directing Schaeffer to appear for an on-the-record interview ("OTR") on July 11, 2017. At Schaeffer's request, Enforcement postponed the OTR until August 1, 2017. Schaeffer failed to appear for the interview.⁸

On August 1, 2017, Enforcement requested a pre-hearing conference to discuss Schaeffer's failure to appear for the OTR. On August 2, I issued an order by electronic and first-class mail scheduling a pre-hearing conference for August 4, 2017. The order informed the parties that failure to appear at the conference may be deemed a default. Schaeffer did not appear at the conference.⁹

On August 4, 2017, following the pre-hearing conference, I issued another order, by electronic and first-class mail, as well as overnight courier, for Schaeffer to show cause why he had not abandoned his defenses and waived his opportunity for a hearing, pursuant to Rule 9221. The show-cause hearing was scheduled for August 10, 2017. The order stated that a failure to appear at the show-cause hearing, in person or through counsel, may be deemed a default and withdrawal of Respondent's hearing request.¹⁰

In response to the show-cause order, on the same day, Schaeffer sent an email to the Case Administrator stating that he would not participate in the show-cause hearing. He wrote: "Please be advised I will not be a party to any proceeding that references the word willful and/or statutory disqualification. In as much as Finra and the DOE isn't [sic] interested in the objective definition of the term willful, I willfully decline to participate."¹¹

I found Schaeffer's failure to participate in the August 4 pre-hearing conference, together with his email, to be a withdrawal of Schaeffer's hearing request. I therefore cancelled the show-cause hearing and directed Enforcement to serve and file a motion for entry of a default decision.¹²

⁶ Decl. ¶ 9; CX-8.

⁷ Decl. ¶ 10; CX-9.

⁸ Decl. ¶ 10; CX-10–CX-11.

⁹ Decl. ¶ 11; CX-12.

¹⁰ Decl. ¶ 12; CX-13.

¹¹ Decl. ¶ 13; CX-14.

¹² Decl. ¶ 13; CX-15.

Based on these facts, I find that Schaeffer is in default.¹³

D. Respondent Failed to Timely Disclose a Bankruptcy on His Form U4

1. Facts

On February 18, 2015, Schaeffer filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Indiana. Schaeffer did not report the bankruptcy on his Form U4 within the required period.¹⁴

2. Discussion

Article V, Section 2(c) of FINRA's By-Laws requires an associated person to report disclosable events on a Form U4 and to keep the form updated and accurate. The By-Laws require associated persons to amend the Form U4 within 30 days of learning of a fact or circumstance requiring an amendment. FINRA Rule 1122 prohibits the filing of incomplete or inaccurate information that is misleading, and requires associated persons to correct filed information when they learn that what they have filed is incomplete or inaccurate.

If an associated person willfully makes a false or misleading statement with respect to any material fact on a Form U4 or fails to report a material fact, he becomes subject to a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act and Article III, Section 4 of FINRA's By-Laws. For the purposes of Form U4's reporting requirements, information is material if there is a "substantial likelihood" that its disclosure would cause "a reasonable regulator, employer, or customer" to think the information would significantly alter the "total mix" of other information available.¹⁵ Schaeffer's bankruptcy is material if, for example, disclosing it would provide regulators "with early notice about his financial difficulties and ability to manage his financial obligations"; provide employers with insight into "the outside financial pressures he was facing"; and provide customers with a measure of whether the bankruptcy reflects on "his ability to provide ... appropriate financial advice."¹⁶

¹³ Respondent may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

¹⁴ Compl. ¶¶ 4, 8. Schaeffer acknowledged during a July 17, 2016 OTR with Enforcement staff that he knew he had an obligation to amend his Form U4 to disclose the bankruptcy filing. CX-6.

¹⁵ *McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *21-22, and nn.25-26 (Mar. 15, 2016).

¹⁶ *Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *32-33 (Nov. 9, 2012) (Respondent's liens, bankruptcies, and judgments were significant because they "raise concerns about whether [respondent] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional ... [and] also reflected significant outside financial pressures that could affect his judgment when providing financial services.").

FINRA's National Adjudicatory Council has held that "essentially all of the information that is reportable on the Form U4 may be considered material."¹⁷

A failure to make a required disclosure on Form U4 is willful if the person provides false information "of his own volition," and the untrue entry is "neither involuntary nor inadvertent."¹⁸ The existence of a bankruptcy is a fact that must be disclosed by amending one's Form U4. Question 14K(1) of the Form asks, "Within the past 10 years: have you made a compromise with creditors, filed a bankruptcy petition, or been the subject of any involuntary bankruptcy petition?"

If a registered representative affirmatively answers Question 14K(1) on his Form U4, then the representative is required to provide detailed information about the bankruptcy, including among other things, the date it was filed, the court, docket number, and the disposition type and date, within 30 days of learning the facts required to be disclosed. Schaeffer was required to amend his Form U4 regarding the bankruptcy no later than March 20, 2015, but he did not. On July 15, 2015, Schaeffer amended his Form U4 to disclose certain items but not the bankruptcy. He finally disclosed the bankruptcy on his Form U4 on March 11, 2016, almost a full year after he should have.

By failing to amend his Form U4 within 30 days to disclose the material fact that he had filed a petition for bankruptcy, Schaeffer violated Article V, Section 2 of FINRA's By-Laws, and FINRA Rules 1122 and 2010. Furthermore, because Schaeffer knew of the bankruptcy when it was filed, and failed to timely update his Form U4, his failure to report was willful.¹⁹ Because his misconduct was willful, and the information he failed to disclose was material, Schaeffer is subject to statutory disqualification.

III. Sanctions

For failure to timely amend a Form U4, FINRA Sanction Guidelines recommend a fine ranging from \$2,500 to \$37,000 and, except in egregious cases, suspension in any or all capacities of between 5 and 30 business days. Where aggravating factors exist, adjudicators are to consider a suspension of up to two years. The relevant principal consideration in determining sanctions is the nature and significance of the information at issue.²⁰

Enforcement recommends a nine-month suspension in all capacities for Schaeffer, but does not seek a fine because of the bankruptcy. Enforcement argues that there are aggravating

¹⁷ *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34 (NAC July 7, 2007).

¹⁸ *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *38 (Apr. 18, 2013).

¹⁹ An associated person willfully violates federal securities laws so long as the "person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). It is not necessary to find that Schaeffer intentionally violated FINRA rules, only that he knew what he was doing when he did not timely amend his Form U4 to disclose the bankruptcy. *See Mathis v. SEC*, 671 F.3d 210, 216-218 (2d Cir. 2012) (finding that respondent was statutorily disqualified when he voluntarily failed to amend Form U4 to disclose tax liens).

²⁰ FINRA Sanction Guidelines at 71 (2017), <https://www.finra.org/industry/sanction-guidelines>.

factors in Schaeffer's misconduct. They include: the importance of the disclosure of a representative's personal bankruptcy to the investing public; Schaeffer's 30 years of experience in the securities industry at the time of his bankruptcy filing, and his awareness of his obligation to report his bankruptcy on his Form U4; his failure do so for more than a year;²¹ and his decision not to appear for an OTR as requested pursuant to Rule 8210.

Enforcement's recommended sanction is appropriately remedial under the circumstances of this case. Therefore, Schaeffer is suspended in all capacities for nine months for his willful failure to disclose the bankruptcy on his Form U4.

IV. Order

For willfully failing to timely update his Form U4, in violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010, Schaeffer is suspended from associating with any FINRA member firm in any capacity for nine months. Because his misconduct was willful, and the information he failed to disclose was material, Schaeffer is subject to statutory disqualification.

If this decision becomes FINRA's final disciplinary action, the suspension shall become effective with the opening of business on November 6, 2017.



Matthew Campbell
Hearing Officer

Copies to:

Christopher Schaeffer (via first-class mail)
Matthew Minerva, Esq. (via email and first-class mail)
Samuel Barkin, Esq. (via email)
Lara C. Thyagarajan, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)

²¹ Guidelines at 7 (Principal Consideration No. 9 concerning the length of time over which the misconduct occurred). See e.g. *Tucker*, 2012 SEC LEXIS 3496, at *63, and *Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. Lexis 49 at *35 (NAC Dec 12, 2008), *aff'd*, *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009), *aff'd*, *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012).