

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM SCHOLANDER
(CRD No. 2938044),

and

TALMAN HARRIS,
(CRD No. 3209947),

Respondents.

Disciplinary Proceeding
No. 2013036681701

Hearing Officer — DW

AMENDED DEFAULT DECISION¹

October 18, 2016

Respondent William Scholander failed to update his Form U4 to disclose a customer complaint alleging unauthorized trading. Respondent Talman Harris failed to adequately supervise Scholander and ensure appropriate disclosure of the complaint. Each Respondent is suspended from associating with any FINRA member firm in any capacity for six months and fined \$50,000.

Appearances

For the Complainant: Jeffrey P. Bloom, Esq., and Perry C. Hubbard, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondents: William Scholander and Talman Harris, *pro se*.

¹ This default decision is amended to clarify that Respondents are suspended in all capacities.

DECISION

I. Introduction

FINRA's Department of Enforcement brought this action against Respondents William Scholander and Talman Harris. The Complaint alleges that Scholander violated Article V, Section 2 of FINRA's By-Laws and FINRA Rule 2010 by failing to update his application for FINRA registration (Form U4) to reflect a customer complaint that was made while Scholander was a registered representative with FINRA member firm Radnor Research & Trading Company ("Radnor Research").² The Complaint further alleges that Harris, a principal and branch manager at Radnor Research's New York office at the time of the alleged customer complaint against Scholander, prevented compliance personnel at the firm from reviewing the communication so that appropriate action could be taken, in violation of NASD Conduct Rule 3010 and FINRA Rule 2010.

Respondents filed an answer denying these charges and this matter was set for a hearing. However, following their failure to appear at an August 11, 2016 Pre-Hearing Conference, both Respondents were held in default pursuant to FINRA Rule 9241(f). On August 18, 2016, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), accompanied by the Declaration of Jeffrey Bloom ("Decl.") and supported by 19 exhibits.³ Neither Respondent has filed an opposition or other response to the Default Motion.

Based on the facts alleged in the Complaint, which are deemed admitted because Respondents defaulted under Rules 9241(f) and 9269(a), as well as the additional evidence Enforcement filed in this proceeding, I find Respondents liable for the violations alleged in the Complaint. For their violations, Respondents are each suspended from associating with any member firm in any capacity for six months and fined \$50,000.

II. Findings of Fact and Conclusions of Law

A. Respondents

1. Scholander's Background

Scholander associated with 13 different firms since first registering with FINRA in 1998.⁴ He first registered as a general securities representative with Radnor Research in May

² The Complaint also named Radnor Research as a Respondent in this proceeding but the allegations against the firm were resolved through settlement.

³ The supporting exhibits are labeled CX-1 through CX-19 and were filed as a part of Enforcement's Pre-Hearing Submissions.

⁴ Complaint ("Compl.") ¶ 9.

2011.⁵ Radnor Research terminated Scholander on January 20, 2015, after he was barred from the industry for violating SEC Rule 10b-5 and other rules unrelated to the allegations here.⁶

2. Harris's Background

Harris associated with 16 different firms since first registering with FINRA in 1998.⁷ Like Scholander, he registered as a general securities representative with Radnor Research in May 2011.⁸ Radnor Research terminated Harris on January 20, 2015, after he was barred from the industry in the same matter as Scholander.⁹

B. FINRA's Jurisdiction

Although Scholander and Harris are no longer registered or associated with a FINRA member, they remain subject to FINRA's jurisdiction for purposes of these proceedings. FINRA retains jurisdiction over Respondents pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed its Complaint while Scholander and Harris were still registered with FINRA, and the Complaint charges both with misconduct committed while associated with a FINRA member.

C. Origin of the Investigation

The matter arose from a cycle examination of Radnor Research that FINRA's District 9, Member Regulation – Sales Practice Department conducted in 2012.¹⁰

D. Respondents' Default

Enforcement filed its Complaint on January 5, 2015. After Scholander and Harris answered, the parties proceeded through discovery and filed pre-hearing submissions and motions in anticipation of an August 19, 2016 hearing. At an August 4, 2016 Final Pre-Hearing Conference, Harris appeared belatedly and Scholander did not appear at all, either in person or through counsel. The conference was rescheduled to August 11, 2016. The order directing Scholander and Harris to attend the rescheduled conference cautioned the parties that “a failure to appear at the August 11 Conference, in person or through counsel, may be deemed a default.”¹¹

⁵ *Id.*

⁶ CX-15.

⁷ Compl. ¶ 10.

⁸ *Id.*

⁹ CX-16.

¹⁰ Decl. ¶ 2.

¹¹ August 4, 2016 Order.

Neither Scholander nor Harris appeared at the rescheduled conference.¹² Scholander told Enforcement the prior evening that he was aware of the conference but no longer wished to participate in this proceeding.¹³ Harris sent the Case Administrator an e-mail before the conference, stating that he did not intend to appear at the conference or at the subsequent hearing.¹⁴ Following the conference, both Respondents were held in default pursuant to FINRA Rule 9241(f).¹⁵

E. Scholander Improperly Failed to Disclose a Customer Complaint

Article V, Section 2(c) of FINRA's By-Laws requires an associated person to report certain disclosable events on a Form U4 and to keep the form updated and accurate. FINRA uses the Form U4 to screen applicants and monitor their fitness for registration within the securities industry.¹⁶ The information on the Form U4 is also important to FINRA member firms that are evaluating whether to hire an employment applicant,¹⁷ and may be important in an investor's choice of a broker.¹⁸ The By-Laws require an associated person to amend the Form U4 within 30 days after learning of a fact or circumstance requiring an amendment. Failing to timely and accurately disclose and update information on a Form U4 violates the high standards of commercial honor and just and equitable principles of trade that FINRA members and their associated persons must observe under Rule 2010.¹⁹

Facts surrounding customer complaints are among the required Form U4 disclosures. In Question 14I, part 3, the Form U4 asks:

Within the past twenty four (24) months, have you been the subject of an investment-related, consumer-initiated, written complaint, not otherwise reported under question 14I(2) above, which ... alleged that you were *involved* in one or more *sales practice violations* and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be

¹² August 11, 2016 Order.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Jason A. Craig, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008).

¹⁷ See *Dep't of Enforcement v. Tucker*, No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *12 (NAC Oct. 4, 2011).

¹⁸ *Dep't of Mkt. Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *40-41 (NAC July 28, 2011).

¹⁹ *Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *15-16 (NAC Dec. 12, 2008) (addressing predecessor Rule 2110).

reported unless the *firm* has made a good faith determination that the damages from the alleged conduct would be less than \$5,000) ...?²⁰

On October 26, 2011, Scholander received a written complaint against him by e-mail from a Radnor Research customer.²¹ The customer told Scholander that she received an account statement reflecting a purchase of 203,965 shares of Deer Consumer Products.²² The investment resulted in a \$200,000 loss.²³ She stated that she never authorized any trading in the account and instructed Scholander—her contact person for the account—to cancel the unauthorized purchases and return the lost funds to her account.²⁴ When Scholander did not immediately cancel the trades, the customer and her attorney sent subsequent e-mails and correspondence threatening legal action unless the trades were rescinded.²⁵ Despite the customer’s written protestation of unauthorized trading, claim for substantial damages and retention of counsel, Scholander never updated his Form U4 to disclose the complaint.²⁶ The nondisclosure was willful.²⁷ And Scholander never cured his nondisclosure, even after the nondisclosure was brought to his attention by FINRA.²⁸ His willful failure to update his Form U4 to reflect the complaint establishes Scholander’s violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rule 2010.

F. Harris Improperly Supervised Scholander

“Assuring proper supervision is a critical component of broker-dealer operations.”²⁹ NASD Conduct Rule 3010(a) requires that FINRA members “establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable [FINRA] Rules.”³⁰ The standard of “reasonableness” is

²⁰ The Form U4 Explanation of Terms provides that the term “sales practice violations” includes any conduct directed at or involving a customer which would constitute a violation of any rules for which a person could be disciplined by any self-regulatory organization and any provision of the Securities Exchange Act of 1934.

²¹ Compl. ¶ 11; CX-4.

²² CX-4.

²³ CX-4.

²⁴ CX-4.

²⁵ Compl. ¶¶ 16-18; CX-8; CX-9.

²⁶ *See Dep’t of Enforcement v. Wedbush Sec., Inc.*, No. 20070094044, 2014 FINRA Discip. LEXIS 40, at *22 (NAC Dec. 11, 2014) (customer letter alleging unauthorized trading “on its face, undoubtedly was a customer complaint”).

²⁷ Compl. ¶ 57.

²⁸ *Id.*

²⁹ *Dep’t of Enforcement v. Rooney*, No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *59 (NAC July 23, 2015), citing *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

³⁰ NASD Conduct Rule 3010 was superseded by FINRA Rule 3110 after the period relevant to this case.

determined based on the particular circumstances of each case.³¹ A violation of Rule 3010 is also a violation of FINRA Rule 2010.³²

Harris was a registered principal of Radnor Research, a branch office manager, and Scholander's supervisor at the time of the customer complaint.³³ When Scholander received the unauthorized trading complaint, he discussed it with Harris.³⁴ Harris instructed Scholander to speak with the customer to resolve matters, but did not notify compliance personnel at Radnor Research's home office about the complaint.³⁵ Instead, Harris prevented the compliance department from reviewing the communication by marking the e-mail that included the complaint as "privileged" in the firm's e-mail review system.³⁶ Given his awareness of the complaint against Scholander, Harris had an obligation to make the firm's compliance staff aware of the allegation and ensure that Scholander made appropriate disclosure.³⁷ His failure to ensure appropriate disclosure, along with his willful concealment of the complaint from others at the firm, violated NASD Conduct Rule 3010 and FINRA Rule 2010.³⁸

III. Sanctions

A. Scholander's Failure to Amend the Form U4

FINRA's Sanction Guidelines ("Sanction Guidelines") recommend for failing to timely amend a Form U4 a monetary sanction of \$2,500 to \$73,000 and a suspension of five to 30 business days.³⁹ In egregious cases, such as those involving "the failure to disclose or timely to disclose a ... customer complaint," the Sanction Guidelines recommend consideration of a longer suspension of up to two years or a bar.⁴⁰

I find Scholander's failure to disclose the customer complaint egregious. The complaint alleged serious misconduct and involved substantial investor losses. Scholander concealed the substance of the allegation from compliance personnel at his firm. He failed to remediate the

³¹ See, e.g., *Rooney*, 2015 FINRA Discip. LEXIS 19, at *60.

³² *Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *2 n.2 (Dec. 19, 2008).

³³ Compl. ¶¶ 10, 12.

³⁴ Compl. ¶ 12.

³⁵ Compl. ¶ 13.

³⁶ Compl. ¶ 14.

³⁷ Compl. ¶¶ 68, 69.

³⁸ *Dep't of Enforcement v. Murray*, No. 2008016437801, 2012 FINRA Discip. LEXIS 64, at *21-22 (OHO Oct. 25, 2012), *aff'd*, 2013 FINRA Discip. LEXIS 33 (NAC Dec. 17, 2013) (a supervisor made aware of a Form U4 disclosable event for a registered representative violates Rule 3010 by failing to ensure that the representative makes necessary disclosure).

³⁹ Sanction Guidelines 69-70 (2015), <http://www.finra.org/industry/sanction-guidelines>.

⁴⁰ *Id.* at 70.

nondisclosure after the violation was brought to his attention. Finally, Scholander has never accepted responsibility for his nondisclosure. No mitigating factors are present. On these facts, an appropriate remedial sanction is a six-month suspension and a \$50,000 fine.

B. Harris's Failure to Supervise

For failure to supervise, the Guidelines recommend the imposition of a fine ranging from \$5,000 to \$73,000 and a suspension of up to 30 business days in all supervisory capacities, or in egregious cases a suspension in all capacities for up to two years or a bar.⁴¹ The principal considerations are (1) whether the respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny; (2) the nature, extent, size, and character of the underlying misconduct; and (3) the quality and degree of the supervisor's implementation of the firm's supervisory procedures and controls.⁴²

Harris's supervisory violation was egregious. Not only did he ignore the "red flags" associated with the alleged unauthorized trading and fail to ensure adequate disclosure of the complaint, he falsely marked the complaint as privileged to conceal the complaint from compliance personnel at the firm. Not only did he fail to implement supervisory procedures and controls, he actively circumvented those controls for Scholander's benefit. No mitigating factors are apparent. Accordingly, an appropriate remedial sanction for Harris's misconduct is similarly a six-month suspension and a \$50,000 fine.

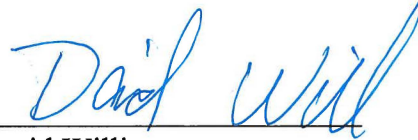
IV. Order

For his failure to disclose a customer complaint in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 2010, Respondent William Scholander is suspended in all capacities for six months and is fined \$50,000. For his failure to fulfill his supervisory responsibilities at Radnor Research and ensure that Scholander adequately disclosed the customer complaint in violation of NASD Conduct Rule 3010 and FINRA Rule 2010, Respondent Talman Harris is suspended in all capacities for six months and fined \$50,000.

⁴¹ *Id.* at 103.

⁴² *Id.*

If this decision becomes FINRA's final disciplinary action, the six-month period of each Respondent's suspension shall commence on December 19, 2016. The fines against each Respondent shall be due and payable upon the Respondent's return to the securities industry.



David Williams
Hearing Officer

Copies to:

William Scholander (via e-mail and first-class mail)
Talman Harris (via e-mail and first-class mail)
Jeffrey P. Bloom, Esq. (via e-mail and first-class mail)
Perry C. Hubbard, Esq. (via e-mail)
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