

**NASD REGULATION, INC.  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TANYA N. VU  
(CRD No. 2954683),

Houston, TX,

Respondent.

Disciplinary Proceeding  
No. C06010015

Hearing Officer—Andrew H. Perkins

**Hearing Panel Decision**

November 15, 2001

**A formerly registered representative violated NASD Conduct Rule 2110 and Article IV, Section 1(c) of the NASD By-Laws by failing to update her application for registration (Form U-4) to reflect that she had been charged with and pled guilty to a felony theft indictment. The Respondent is suspended from associating with any member firm in any capacity for 30 business days, ordered to requalify by examination before re-entering the securities industry in any capacity, fined \$10,000, and assessed costs of \$1,186.75.**

**Appearances**

George C. McGuigan, Jr., Regional Counsel, Dallas, Texas, and Rory C. Flynn, Chief Litigation Counsel, Washington, DC, for the Department of Enforcement.

Tanya N. Vu appeared on her own behalf.

## DECISION

### I. INTRODUCTION

The Complaint charges Respondent Tanya N. Vu (“Vu” or the “Respondent”) with violating NASD Conduct Rule 2110 and Article IV, Section 1(c) of the NASD By-Laws by failing to update her Uniform Application for Securities Industry Registration or Transfer (Form U-4). The Complaint alleges that she was indicted in Texas for felony theft while she was registered with WMA Securities, Inc. (“WMA”), a member of the National Association of Securities Dealers, Inc. (“NASD”). The Complaint further alleges that she failed to amend her Form U-4 to disclose the charge and her plea of guilty to the charge, which she entered on October 12, 1998. (Compl. ¶¶ 3–4.)

### II. PROCEDURAL HISTORY

The Department of Enforcement (“Department”) filed the Complaint against Vu on June 22, 2001; Vu filed her Answer on July 16, 2001.

Vu’s Answer consisted of a letter to counsel for the Department. The letter did not address directly the factual allegations in the Complaint; rather, it offered a brief explanation of why Vu had not amended her Form U-4 to disclose the Texas criminal proceedings. Vu asserted that she had not been “convicted” because she had received a deferred adjudication on her guilty plea. Accordingly, Vu concluded that she did not have to amend her Form U-4. Vu submitted a copy of the Certificate of Disposition from the District Court of Harris County, Texas dated May 25, 2001, which shows that the Court deferred adjudication of guilt, placed Vu on community supervision for two years, and fined her \$500. The Certificate further shows that the Court dismissed the case upon her completion of community supervision.

Although in the Answer Vu waived her right to a hearing, at the Initial Pre-Hearing Conference Vu elected to have a hearing once she learned that it could be held in Houston rather than at the offices of NASD Regulation, Inc. (“NASD Regulation”) in Dallas.

The hearing was held on October 11, 2001, before a Hearing Panel comprised of the Hearing Officer and two current members of the District Committee for District 6. The Department offered the testimony of two witnesses, including the Respondent, and introduced 10 exhibits into evidence.<sup>1</sup> Vu testified briefly in her own defense and joined the Department in requesting that the exhibits the Department offered be admitted into evidence.<sup>2</sup>

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. The Respondent**

According to the Central Registration Depository (“CRD”),<sup>3</sup> Vu was employed by WMA from September 29, 1997, until May 19, 2000. Vu became registered as an Investment Company and Variable Contracts Products Representative on December 24, 1997, and as an Investment Company and Variable Contracts Products Principal on December 7, 1998. Both of her registrations terminated effective May 19, 2000, and since that date she has not worked in the securities industry or been registered with the NASD.

#### **B. Jurisdiction**

NASD Regulation has jurisdiction over this proceeding under Article V, Section 4

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<sup>1</sup> The hearing exhibits are referenced as: “C- \_\_\_\_.” The hearing transcript is referenced as: “Tr. at \_\_\_\_.”

<sup>2</sup> Tr. at 20.

<sup>3</sup> C-1, at 2.

of the NASD By-Laws. Vu was registered with the NASD at the time of her alleged failure to update her Form U-4, and the Department filed the Complaint within two years of the date she was last registered with the NASD.

**C. Background and Investigation**

The underlying facts are not disputed. On July 27, 1998, the Respondent was indicted in Harris County, Texas for felony theft,<sup>4</sup> to which, on October 12, 1998, she pled guilty.<sup>5</sup> In return for her guilty plea, the District Court of Harris County Texas deferred an adjudication of guilt, placed the Respondent on two-years supervised probation, and fined her \$500.<sup>6</sup> The Respondent successfully completed the terms of her probation, and the court dismissed the charge without making a finding of guilt.

When WMA learned of the foregoing criminal proceedings, it launched an internal investigation. WMA's compliance department asked the Respondent to provide certain information, but she refused to cooperate. As a result, WMA terminated her. WMA reported that it terminated her for "failure to respond to compliance department inquiry."<sup>7</sup>

NASD Regulation opened an investigation of the circumstances of her termination upon receipt of the termination notice. In connection with the investigation, NASDR staff requested the Respondent to provide information about the Texas criminal proceedings and her termination from WMA. In response, the Respondent admitted that she had pled guilty to felony

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<sup>4</sup> C-4, at 4; Tr. at 35.

<sup>5</sup> Id. at 8. She also was charged with felony forgery of a commercial instrument following her arrest on June 26, 1998. (C-4, at 5.) From the record, it appears that this charge was not prosecuted.

<sup>6</sup> C-4, at 8; C-7, at 4.

<sup>7</sup> C-1, at 2.

theft and that she had received a deferred adjudication of guilt under her plea agreement.<sup>8</sup> She also submitted a copy of the Community Supervision Order.<sup>9</sup>

#### **D. Discussion**

The Respondent admits that she did not amend her Form U-4 to disclose in response to Questions 23A(1)(a) and (b) of the Form U-4 that she was the subject of a disclosable criminal prosecution.<sup>10</sup> The Respondent provided two excuses for her failure. As to Question 23A(1), which asks the applicant to disclose whether he or she has ever been convicted of, pled guilty to, or been charged with any felony,<sup>11</sup> the Respondent stated that she assumed she did not have to answer affirmatively because she has not been convicted of the charge.<sup>12</sup> She did not have an explanation for the basis of her opinion that she did not have to disclose the charge and her guilty plea. As to the remaining question, the Respondent stated that she “didn’t know that how important it is to amend form U-4.”<sup>13</sup>

The Hearing Panel finds that the Respondent violated NASD Conduct Rule 2110 by failing to file an amendment to the September 1997 Form U-4 she submitted upon joining WMA.<sup>14</sup> A registered person bears the burden of maintaining the accuracy of his or her Form

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<sup>8</sup> C-7, at 2.

<sup>9</sup> Id. at 4.

<sup>10</sup> Tr. at 36. The same questions appear on her original hand-written Form U-4 as Questions 22(A)(1) and (3). See C-6, at 4.

<sup>11</sup> See C-8, at 6.

<sup>12</sup> Tr. at 36-38.

<sup>13</sup> Id. at 36.

<sup>14</sup> See, e.g., Department of Enforcement v. Howard, No. C11970032, 2000 NASD Discip. LEXIS 16, at \*31 (Nov. 16, 2000); District Bus. Conduct Comm. v. LaPlante, No. C04930046, 1994 NASD Discip. LEXIS 202 (Oct. 6, 1994).

U-4 by updating the information in the filing, as necessary.<sup>15</sup> The Respondent cannot excuse her failure by claiming that she did not understand her obligation.<sup>16</sup>

#### IV. SANCTIONS

A Form U-4 is fundamental to the business and integrity of the securities industry. It is “used by all the self-regulatory organizations, including the NASD, state regulators, and broker-dealers to monitor and determine the fitness of securities professionals,”<sup>17</sup> and “serves as a vital screening device for hiring firms and the NASD against individuals with ‘suspect history.’”<sup>18</sup> “The candor and forthrightness of applicants is critical to the effectiveness of this screening process.”<sup>19</sup> Thus, the NASD has warned applicants that:

[t]he filing with the Association of information with respect to . . . 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.

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<sup>15</sup> Howard, 2000 NASD Discip. LEXIS at \*31-32 (citing In re Frank R. Rubba, Exchange Act Release No. 40,238 (July 21, 1998)); In re Robert E. Kauffman, Exchange Act Release No. 33,219, 1993 SEC LEXIS 3163, at \*5 (Nov. 18, 1993) (construing former Rule 2110, Article III, Section 1), aff’d, 40 F.3d 1240 (3d Cir. 1994) (table).

<sup>16</sup> See, e.g., LaPlante, 1994 NASD Discip. LEXIS 202 (no mitigation that respondent “didn’t think about or know enough” to amend his Form U-4 to reflect disclosable criminal prosecution).

<sup>17</sup> In re Rosario R. Ruggiero, Exchange Act Release No. 37,070, 1996 SEC LEXIS 990, at \*8-9 (Apr. 5, 1996).

<sup>18</sup> District Bus. Conduct Comm. v. Prewitt, No. C07970022, 1998 NASD Discip. LEXIS 37, at \*8 (NAC Aug. 17, 1998). See also, e.g., In re Thomas R. Alton, Exchange Act Release No. 36,058, 1995 SEC LEXIS 1975, at \*4 (Aug. 4, 1995).

<sup>19</sup> Alton, 1995 SEC LEXIS 1975, at \*4. See also, e.g., District Bus. Conduct Comm. v. Perez, No. C10950077, 1996 NASD Discip. LEXIS 51, at \*7 (Nov. 12, 1996) (“Full and accurate disclosures on a Form U-4 are critical to the securities industry because member firms must be able to assess properly whether an individual should be employed, and, if so, subject to enhanced supervision.”).

IM-1000-1. The Form also requires applicants to amend their answers “whenever changes occur to answers previously reported.”<sup>20</sup> This is far more than a mere technical violation: “[a] material misrepresentation on a Form U-4 is a serious offense.”<sup>21</sup>

Here the Respondent seeks to mitigate the seriousness of her offense by arguing that she thought she did not have to disclose the Texas criminal proceedings because they did not end in a conviction. The Hearing Panel gives no weight however to this explanation. The Hearing Panel concludes that the Respondent did appreciate the need to disclose the criminal proceedings, but she elected not to do so because she did not care about staying registered as a securities professional. Indeed, in her closing comments the Respondent candidly admitted that she did not care if the Hearing Panel imposes a suspension because she had “already quit.”<sup>22</sup> In her words that was “one of the reason[s she] didn’t really care about amend[ing the Form] U-4 or tak[ing] a look at any paperwork with that.”<sup>23</sup>

In contrast, the Respondent did care about keeping her license to sell insurance. Thus, in October 1999, the Respondent filed a Renewal Application with the Texas Department of Insurance and accurately disclosed the nature of the criminal proceedings.<sup>24</sup>

The Hearing Panel also notes that in September 1997, upon registering with WMA, the Respondent signed an Acknowledgment and Certification that states that she received a copy of WMA’s compliance and procedures manual, which included provisions requiring associated

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<sup>20</sup> C-8, at 11; C-6, at 5.

<sup>21</sup> Alton, 1995 SEC LEXIS 1975, at \*4.

<sup>22</sup> Tr. at 59.

<sup>23</sup> Id.

<sup>24</sup> C-5.

persons to disclose all of their criminal history and to maintain an up-to-date Form U-4.<sup>25</sup> The Hearing Panel further notes that in February 2000, in connection with her annual compliance review, the Respondent—in response to the very first item—represented that she had informed WMA of any changes that would affect the information contained on her original Form U-4.<sup>26</sup> The Respondent received repeated and clear notice of her obligation to amend her Form U-4 to keep it current.

Finally, the Hearing Panel rejects any suggestion that the Respondent misunderstood Question 23A. Although the Respondent testified that she thought her lack of a conviction permitted her to answer “no” to the entire question—ignoring the portion that asked if she had pled guilty to a felony—the record shows that she is quite knowledgeable about court proceedings. She worked for more than seven years as an interpreter of the Vietnamese language for various courts in Harris County, Texas,<sup>27</sup> and she appeared to possess a good understanding of court proceedings in general and the nature of the proceeding brought against her in particular. Without question, the Respondent understood and appreciated the distinction between a conviction and a guilty plea. The Respondent’s failure to amend her Form U-4 did not result from confusion or misunderstanding.

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<sup>25</sup> C-10, at 2,4.

<sup>26</sup> C-10, at 5. The certification form also explains the steps she needed to take if she had any court proceedings to disclose.

<sup>27</sup> C-9, at 4.



## **V. SANCTIONS**

The applicable Sanction Guideline for failing to amend a Form U-4 provides for a fine of \$2,500 to \$50,000 and a suspension of 5 to 30 business days.<sup>28</sup> In light of the seriousness of the violation, the Department argued that the Respondent should be suspended for 30 business days and fined \$5,000. The Hearing Panel considers these sanctions insufficient in light of the Respondent's callous attitude. To impress upon the Respondent the seriousness of her offense, the Hearing Panel will impose a censure, a \$10,000 fine, and a suspension of 30 business days. In addition, the Hearing Panel will order the Respondent to requalify by examination before she re-enters the securities industry in any capacity. The Respondent presented no credible mitigating evidence to warrant a lesser sanction.

## **VI. ORDER**

Tanya N. Vu is suspended for 30 business days from association with any NASD member firm in any capacity, fined \$10,000, and ordered to requalify by examination before she re-enters the securities industry in any capacity.<sup>29</sup>

The foregoing sanctions shall become effective on a date set by the NASD, but not earlier than 30 days after this Decision becomes the final disciplinary action of the NASD, except that if this Decision becomes the final disciplinary action of the NASD, the Respondent's suspension shall become effective with the opening of business on January 7, 2002, and end at the close of business on February 19, 2002.

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<sup>28</sup> NASD Sanction Guidelines 77-78 (2001 ed.).

<sup>29</sup> The Hearing Panel considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

Vu also is ordered to pay costs in the total amount of \$1,186.75, which include an administrative fee of \$750 and hearing transcript costs of \$436.75.

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies to:

Tanya N. Vu (by FedEx, next day delivery, and first-class mail)  
George C. McGuigan, Jr., Esq. (by first-class and electronic mail)  
Rory C. Flynn, Esq. (by first-class and electronic mail)