FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. KEVIN JOHN HERNE (CRD No. 5320629), Respondent.	Disciplinary Proceeding No. 2022076589301 Hearing Officer–LOM **DEFAULT DECISION** May 22, 2025

Respondent willfully omitted material information from his Form U4 that he was required to disclose. For this misconduct, he is suspended from associating with any FINRA member firm in any capacity for one year and fined $5,000.

Appearances

For the Complainant: Román Rodriguez, Esq., Nicholas Pilgrim, Esq., and John R. Baraniak Jr., Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

For nearly fifteen years, Respondent Kevin John Herne was a registered representative associated with FINRA member firm LPL Financial LLC ("LPL" or the "Firm"). But, on March 1, 2023, the Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that it had discharged him for failing to timely report that he had been charged with a felony. The Department of Enforcement later filed and served the Notice of Complaint and Complaint in this proceeding, charging Respondent with willfully failing to disclose on his Uniform Application for Securities Industry Registration or Transfer (Form U4) that he had been charged with a felony. Enforcement asserted that he thereby violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Respondent failed to file an Answer to the Complaint. Accordingly, I ordered Enforcement to file a motion for entry of a default decision supported by a memorandum of law and a declaration. In compliance with that Order, on April 28, 2025, Enforcement filed a motion

for entry of default decision ("Default Motion"), together with counsel's declaration made under penalty of perjury in support of the motion ("Decl.") and supporting exhibits (CX-1 through CX-26). Respondent did not respond to the motion.

For the reasons set forth below, I find Respondent in default and grant Enforcement's Default Motion. As permitted under FINRA Rules 9215(f) and 9269, I deem the allegations in the Complaint admitted. As sanctions for Respondent's failure to disclose that he had been charged with a felony, I suspend Respondent from associating with any FINRA member firm in any capacity for one year and fine him $5,000.[1]

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Respondent first became registered with FINRA as a General Securities Representative ("GSR") through his association with a FINRA member firm in 2007.[2] From November 2008 until March 2023, Respondent was registered with FINRA as a GSR through his association with LPL.[3]

On March 1, 2023, LPL filed a Form U5 disclosing that it had discharged Respondent the previous month because he had "[f]ailed to timely report felony charge to Firm, in violation of Firm policy."[4] Respondent has not been registered or associated with any FINRA member since the Firm filed the Form U5.[5]

B. FINRA's Jurisdiction

Although Respondent is no longer registered or associated with a FINRA member firm, FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint on January 30, 2025, within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct committed while he was associated with a FINRA member firm.[6]

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[1] I also find that Respondent willfully failed to disclose material information he was required to disclose on the Form U4. As discussed below, by operation of law, that finding automatically leads to a statutory disqualification under Section 3(a)(39)(B) of the Securities Exchange Act of 1934 ("Exchange Act"). Statutory disqualification is not a sanction imposed by FINRA, but rather a congressionally created collateral consequence of the willfulness finding.

[2] Complaint ("Compl.") ¶ 2; Decl. ¶ 10; Complainant's Exhibit ("CX-") 6, at 4, 6.

[3] Compl. ¶ 3; Decl. ¶ 11; CX-6, at 3, 5.

[4] Compl. ¶ 4; Decl. ¶ 11; CX-7, at 1–2.

[5] CX-6, at 3.

[6] Compl. ¶ 5.

C. Origin of the Proceeding

1. Amended Form U4

At some point, FINRA became aware that Respondent had been charged with a felony that he had not disclosed on his Form U4. As reflected on Respondent's record in the Central Registration Depository ("CRD"), FINRA advised Respondent's Firm of the felony charge and the Firm later filed a Form U4 amendment on his behalf to disclose the felony charge.[7]

LPL filed the amended Form U4 disclosing the previously undisclosed felony on behalf of Respondent on October 13, 2022.[8] The new information was highlighted in red on an Initial Criminal Disclosure Reporting Page ("Criminal DRP").[9] The Criminal DRP disclosed that Respondent had been charged with a felony offense in Harris County, Texas on May 15, 2020.[10] The offense was a single count of Assault - Continuous Violence Against the Family.[11] According to the Criminal DRP, the criminal case was then still pending.[12] Although the amended Form U4 had a place for Respondent to sign the form and acknowledge its contents, Respondent did not sign it. The words "Rep unavailable for signature" appear above the signature line.[13] A Firm representative did sign the document,[14] and a box was checked saying that the information in the Form U4 could be used to satisfy the Firm's reporting obligation pursuant to FINRA Rule 4530(a)(1).[15]

2. Form U5

Although the Firm amended Respondent's Form U4 in October 2022, as noted above, it was not until March 1, 2023, that the Firm filed a Form U5 disclosing that it had discharged

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[7] CX-6, at 14 ("Ultimately, FINRA advised the firm of the felony charge against Herne, and the firm filed a Form U4 amendment on Herne's behalf to disclose the felony charge."). The Firm recited in response to a Rule 8210 request that FINRA had alerted the Firm to a potential reportable event for Respondent on August 23, 2022, in a Disclosure Review Letter, and had asked the Firm for documentation related to an upcoming court date on August 30, 2022. CX-12, at 3.

[8] CX-1, at 1, 16–18.

[9] CX-1, at 16–18.

[10] Compl. ¶ 11; Decl. ¶ 5; CX-2.

[11] Compl. ¶¶ 11–12; CX-2, at 1; CX-3.

[12] Compl. ¶¶ 11–12; Dec. ¶ 6; CX-1, at 16–18.

[13] CX-1, at 15.

[14] CX-1, at 15.

[15] CX-1, at 16. The amended Form U4 also contained historical disclosures that had been made previously. One involved a felony (tampering with a government record) that had been charged in 2004 and dismissed in 2005. Another involved a misdemeanor (resisting arrest) that was resolved in 2006 with community supervision imposed. A third involved a civil judgment lien that had been filed in court in April 2021. CX-1, at 19–21; CX-6, at 11–12.

Respondent on February 3, 2023.[16] The Form U5 said he was terminated due to his failure to timely report the 2020 felony charge to the Firm.[17]

3. FINRA Investigation

In the summer of 2023, FINRA staff asked Respondent for information related to the felony charge against him.[18] In particular, the staff asked why he did not timely disclose the felony charge on an amended Form U4 within 30 days of the event, as required under FINRA's rules.[19] Respondent answered with the explanation that he was involved in "a highly contentious divorce."[20] He said, "I was dealing with so much and so many conflicting narratives in regards to what I could and could not do that I simply didn't know what to do and was confused."[21] For various reasons, he asserted that he had been "very sensitive to revealing or talking about anything."[22] He asserted in correspondence with FINRA staff that an attorney had instructed him to "plead the fifth."[23]

FINRA staff sent the Firm a Rule 8210 request dated December 1, 2023, asking why Respondent's Form U4 was not updated to reflect the previously undisclosed felony charge until October 13, 2022, which FINRA staff calculated was 52 days after the Firm became aware of the felony charge on August 23, 2022.[24] The Firm responded, explaining that it had attempted numerous times to contact Respondent to obtain information and documents to update his Form U4. But he did not respond or provide information or acknowledge his obligation to file an amendment.[25] The Firm then filed the amended Form U4 and conducted internal disciplinary proceedings that resulted in his termination.[26]

FINRA took Respondent's on-the-record testimony on February 20, 2024, and followed up with a Rule 8210 request in April 2024.[27] He responded to the Rule 8210 request in May 2024.[28] Primarily the request and his response concerned the identity of various attorneys who

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[16] CX-7, at 1–2

[17] CX-7, at 2.

[18] CX-19.

[19] CX-19, at 1.

[20] CX-19, at 1.

[21] CX-19, at 1.

[22] CX-19, at 1.

[23] CX-19, at 1.

[24] CX-12, at 3.

[25] CX-12, at 3.

[26] CX-12, at 3.

[27] CX-14.

[28] CX-15.

represented him in connection with his criminal case, his divorce case, and a disability insurance claim.[29] The inquiry seemed directed at the issue of Respondent's asserted confusion about what he could disclose about his situation. Respondent also represented in his Rule 8210 response that he was unaware of any customer complaints or issues during the relevant period of May 1, 2020, through March 31, 2023.[30]

4. Status of Criminal Case

The criminal case against Respondent remained pending until August 13, 2024, when Respondent waived arraignment and entered a plea of guilty. The court made no finding of guilt. Instead, it placed him on Deferred Adjudication of Guilt for seven years, a form of probation.[31]

D. Respondent's Default

1. First Notice and Complaint

Enforcement filed and served its Notice of Complaint ("First Notice") and Complaint on January 30, 2025, alleging that for more than two years Respondent willfully failed to disclose on his Form U4 that he had been charged with a felony.[32] A certificate of service filed with the First Notice and Complaint represented that the documents were served on Respondent by certified mail and first class mail addressed to Respondent at two addresses, one in Houston and the other in Rosenberg, Texas.[33] The Houston address is Respondent's residential address in CRD.[34] The Rosenberg, Texas address is his last known residential address.[35] Enforcement also sent a courtesy copy of the documents to Respondent at the email address from which Respondent had been corresponding with Enforcement during the investigation.[36] The First Notice stated that Respondent was required to file and serve an Answer by February 27, 2025.[37]

The SEC has long emphasized the importance of updating one's CRD address. It has noted that service is deemed complete upon mailing to that CRD address unless FINRA has actual notice that the CRD address is inaccurate.[38] Under FINRA Rules 9131(b), 9134(a)(2), and

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[29] CX-14, at 1–2; CX-15, at 1–2.

[30] CX-15, at 3.

[31] CX-5, at 1, 6–7.

[32] Compl. ¶ 1.

[33] CX-16.

[34] Decl. ¶ 22.

[35] Decl. ¶ 23.

[36] Decl. ¶ 25.

[37] Decl. ¶ 29.

[38] *Christopher Robert Arnold*, Exchange Act Release No. 103027, 2025 SEC Lexis 1349, at *9, nn.9–10 (May 13, 2025).

9134(b)(1), service of a complaint by certified mail at a respondent's CRD address is sufficient to give effective notice, except where the staff has actual knowledge that the respondent's CRD address is out of date. In that event, a duplicate set of the First Notice and Complaint must be served at the respondent's last known residential address (in addition to the documents served at the CRD address). In this case, Enforcement properly served the First Notice and Complaint on Respondent by certified mail at both his CRD Address and his last known residential address. Respondent therefore received effective notice.

In fact, there is evidence that Respondent received actual notice. FINRA staff received a receipt for the certified mail copy of the First Notice and Complaint delivered to Respondent's last known residential address that showed it was delivered. The receipt stated "Delivered, Left with Individual," and bore an illegible signature.[39] And, on February 21, 2025, before his Answer was due, Respondent emailed the Office of Hearing Officers Case Administrator from the same email address to which Enforcement sent a courtesy copy of the First Notice and Complaint. He said in the email that he was unsure what he was supposed to do but "wanted to reach out in case there was a deadline."[40] Respondent was provided links to resources containing sample answers and information relevant to the conduct of a disciplinary proceeding. He was reminded that he was required to submit an Answer no later than Thursday, February 27, 2025.

Respondent failed to file an Answer by the deadline.[41]

2. Second Notice and Complaint

Enforcement then filed and served its second Notice of Complaint ("Second Notice"), along with the Complaint, on March 3, 2025. Enforcement served these documents in the identical manner that it served the First Notice and Complaint,[42] and the results were the same. Enforcement received a return receipt for the documents sent by certified mail to Respondent's last known residential address showing that they had been received and signed for, although the signature was illegible.[43] The Second Notice specified that an Answer was due no later than March 20, 2025. As with service of the First Notice and Complaint, service of the Second Notice and Complaint was sufficient under FINRA's rules for effective notice.

There also is evidence that Respondent in fact received the Second Notice accompanied by the Complaint. He engaged in email correspondence with Enforcement just prior to the due

[39] Decl. ¶ 28; CX-18.

[40] CX-21, at 2.

[41] Decl. ¶ 34.

[42] Decl. ¶¶ 35–36.

[43] Decl. ¶ 39; CX-25.

date for the Answer. Among other things, he said that he was incapable of dealing with the matter and that he had moved once again. He did not provide a new address.[44]

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Although he certainly had notice of the Complaint after receiving it with both the First and Second Notices, Respondent did not file an Answer. Accordingly, I find that Respondent is in default.[45]

E. Respondent's Violations

1. Applicable Rules

Respondent is charged with violating Article V, Section 2(c) of FINRA's By-Laws, and FINRA Rules 1122 and 2010.

- Article V, Section 2(c) of FINRA's By-Laws provides that every application for registration "shall be kept current at all times by supplementary amendments." Such amendments must be filed no later than 30 days after learning the facts and circumstances giving rise to the amendment.

- FINRA Rule 1122 provides that no person associated with a FINRA member firm shall file information with FINRA that is incomplete or inaccurate in a way that is misleading or fail to correct such a filing after notice that the filing is incomplete or inaccurate.

- FINRA Rule 2010 is an ethical conduct rule. It provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." This rule, like all other FINRA rules, applies to both members and their associated persons. FINRA Rule 140 provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

2. Respondent's Misconduct

The critical facts are established. Respondent was charged with a felony in Harris County, Texas on May 15, 2020,[46] and he never amended his Form U4 to disclose that felony

[44] CX-26.

[45] Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

[46] Compl. ¶ 11; CX-2.

charge. The felony charge was only disclosed in an amended Form U4 that his Firm filed on his behalf on October 13, 2022.[47]

Respondent was aware of the felony charge, if not immediately, then within less than a week. In connection with the felony charge, he appeared with counsel in court on May 21, 2020, and the court set the amount of the bond.[48] Respondent signed a bail bond that same day, which stated that he had been charged with a felony offense.[49] He remained aware of the pending felony charge because of on-going criminal proceedings. An indictment was filed on July 7, 2020.[50] Respondent appeared in court with counsel a few weeks after the indictment and several more times from 2020 through 2024.[51] Finally, on August 13, 2024, he appeared again with counsel and entered a plea of guilty on the felony charge, after which the court placed him on deferred adjudication.[52]

Respondent knew that a felony charge had to be disclosed. As noted above, he had previously amended his Form U4 to disclose a 2004 felony charge that was dismissed in 2005.[53] At all relevant times, Question 14A(1)(b) of the Form U4 asked, "Have you ever . . . been charged with any felony?"[54] If the answer to that question was "Yes," then the Form U4 required that additional details be provided and disclosed, as illustrated by the amended Form U4 that the Firm eventually filed on Respondent's behalf.[55] The Firm also periodically reminded Respondent of his duty to disclose a felony and gave him an opportunity to correct his disclosures if they needed correction. In October 2020, the annual compliance questionnaire asked, "Since you've been registered, have any of the following occurred for which you have not notified LPL and/or are not accurately reported on your U4? . . . Any felony charges or convictions of any kind (even if it is not investment related)."[56] Although he was aware of the felony charge, Respondent answered that question, "No."[57] The annual compliance questionnaire for June 2022 asked Respondent to confirm that he had notified his Firm of certain events, including any felony charges or convictions of any kind, even if not investment related. The Firm noted that such

[47] CX-1, at 16–18.

[48] CX-5, at 1.

[49] CX-4, at 1.

[50] CX-3; CX-5, at 2.

[51] CX-5, at 2–7.

[52] CX-5, at 7.

[53] *See infra* at 3, n.15.

[54] Compl. ¶ 10; CX-1, at 10 (emphasis omitted).

[55] CX-1, at 16–19.

[56] CX-9, at 2.

[57] CX-9, at 2.

events had to be reflected accurately on the Form U4. In response, Respondent said, "I confirm my information is current."[58]

Because Respondent did not amend his Form U4 to disclose the May 2020 felony charge, his Form U4 was *not* current. It was inaccurate and incomplete for more than two years, until the Firm, prompted by FINRA, amended his Form U4 on October 13, 2022.[59] Respondent's failure to keep his Form U4 current, accurate, and complete was a violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122. Respondent's conduct was unethical and did not meet the high standards of commercial honor required by FINRA Rule 2010.[60] He ignored his clear duty to amend his Form U4 to disclose the felony charge, and he misled his Firm in responding to the annual questionnaires in a way that concealed the May 2020 felony charge.

3. Statutory Disqualification

Article III, Section 3(b) of FINRA's By-Laws prohibits a person from becoming associated with a FINRA member firm if that person becomes subject to a disqualification that falls within the scope of Section 4 of Article III. Section 4, in turn, specifies that a person is subject to a disqualification from association with a member firm if the person is subject to a "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act. The Exchange Act specifies that a person is subject to a "statutory disqualification" in a variety of circumstances. One such circumstance is when a person is found to have "willfully" omitted to disclose a material fact required to be stated in a mandatory report filed with FINRA.[61]

a. Materiality

Form U4 is a mandatory report that requires amendment and updating in various circumstances. All information reportable on a Form U4 is presumed to be material.[62] "The materiality of . . . information is particularly evident when, as in this case, their disclosure should have been triggered by specific questions on the Form U4."[63]

Even aside from the presumption, however, the omitted information regarding the felony charge against Respondent was material. "In the context of Form U4 disclosures, a fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer

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[58] CX-10, at 2.

[59] Compl. ¶¶ 16–17.

[60] *Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *17 (July 31, 2019), *petition for review denied*, No. 19-1251, 2021 U.S. App. LEXIS 208 (D.C. Cir. Jan. 5, 2021).

[61] *Holeman*, 2019 SEC LEXIS 1903, at *17.

[62] *Id.* at *14, 33–34, 45.

[63] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC Lexis 3496, at *28 (Nov. 9, 2012).

would have viewed it as significantly altering the total mix of information made available."[64] "Materiality is an objective standard 'involving the significance of an omitted or misrepresented fact.'"[65]

In this case, all stakeholders—regulator, employer, and customer—would reasonably want to know about a felony charge against a registered representative. Even though the felony charge does not involve investment related conduct, it reflects on the person's character and trustworthiness. The Form U4 requires disclosure of all felony charges, regardless of whether they involve investment related activities. A regulator would want to monitor how the felony charge is resolved. An employer might increase its oversight of that person after learning of the felony charge. Customers might want to reconsider whether to rely on such a person's counsel and judgment. The felony charge at issue is material.

b. Willfulness

Respondent's failure to disclose the felony charge against him was willful. A violation is deemed willful if the person charged with the duty knows what he is doing[66] and voluntarily commits the acts that constitute the violation.[67] The SEC has long held that the failure to make a required report constitutes a willful violation,[68] and Respondent here was required to disclose the felony charge on his Form U4. He knew it was required because he had previously disclosed an earlier felony charge, and the Firm had reminded him of the requirement in its annual questionnaires. Respondent falsely responded to those annual questionnaires that the Form U4—without the missing information—was current. The false responses are evidence that his actions were willful.[69] Respondent repeatedly, over the course of two years, chose to conceal the information he was required to disclose. That choice was willful.[70]

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[64] *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *21–22 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

[65] *McCune*, 2016 SEC LEXIS 1026, at *23.

[66] *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

[67] *Jason A Craig*, Exchange Act Release No 59137, 2008 SEC LEXIS 2844, at *13 (Dec. 22, 2008); *Dep't of Enforcement v. Mantei*, No. 2015045257501, 2023 FINRA Discip. LEXIS 10, at *37 (NAC May 30, 2023), *appeal docketed*, No. 3-21516 (SEC June 27, 2023).

[68] *Cf. Oppenheimer & Co., Inc*., Exchange Act Release Nos. 3-5244 and 3-5248, 1980 SEC Lexis 2358, at *4 (May 19, 1980).

[69] *Richard Allen Riemer, Jr*., Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *13 and n.18 (Oct. 31, 2018) (false responses to annual compliance questionnaires and certifications constitute evidence that omission of information from Form U4 was willful).

[70] The Form U4 also requires the disclosure of tax liens. The failure to timely amend a Form U4 to disclose such required information has consistently been held to be willful. *See, e.g., Riemer,* 2018 SEC LEXIS 3022.

Because Respondent willfully omitted material information he was required to disclose on his Form U4, Respondent is subject to a statutory disqualification by operation of law under Exchange Act Section 3(a)(39)(F). Statutory disqualification is neither a punishment nor a sanction.[71] It is simply a statutory consequence created by Congress if misconduct is found to have been willful.

III. Sanctions

For the filing of a false, misleading, or inaccurate Form U4 or amendment, in violation of Article V of the FINRA By-Laws and FINRA Rules 1122 and 2010, FINRA's Sanction Guidelines ("Guidelines") recommend that an individual be fined between $5,000 and $20,000 and suspended in any or all capacities for between ten business days and six months. If aggravating factors predominate, the Guidelines recommend considering a suspension for up to two years. And where a respondent intended to conceal information or mislead, the Guidelines recommend a bar.[72]

There are several aggravating factors in this case. The length of time that Respondent failed to disclose the felony charge was substantial.[73] In connection with the annual questionnaires and certifications, Respondent purposefully misled his Firm by representing that his disclosures were current.[74] Although Respondent sent emails to the Office of Hearing Officers and Enforcement regarding the proceeding, he failed to comply with FINRA's rules and did not file an Answer. He has not taken responsibility for his misconduct.[75] Respondent intentionally engaged in the misconduct, failing to disclose a felony charge that he knew was pending against him.[76]

A one-year suspension and a $5,000 fine are appropriate and serve to protect investors from future misconduct by Respondent.

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[71] *Thaddeus J. North*, Exchange Act Release No. 84500, 2018 SEC LEXIS 3001, at *23 (Oct. 29, 2018).

[72] Guidelines at 108 (2024), http://www.finra.org/sanctionguidelines.

[73] Guidelines at 108 (Specific Principal Consideration 4).

[74] Guidelines at 108 (Specific Principal Consideration 3).

[75] Guidelines at 7 (Principal Consideration in Determining Sanctions 2).

[76] Guidelines at 8 (Principal Consideration in Determining Sanctions 13).

IV. Order

Respondent Kevin John Herne willfully omitted material information from his Form U4 in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. For that misconduct Herne is suspended from associating with any FINRA member firm in any capacity for one year and fined $5,000. The suspension shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

Lucinda O. McConathy
Hearing Officer

Copies to:

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