BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Joseph S. Amundsen Easton, PA, Respondent.	DECISION Complaint No. 2010021916601 Dated: September 20, 2012

Respondent willfully failed to disclose material information on 36 Forms U4. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Thomas M. Huber, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Joseph S. Amundsen, Pro Se

Decision

Joseph S. Amundsen ("Amundsen") appeals a December 30, 2011 Hearing Panel decision pursuant to FINRA Rule 9311. The Hearing Panel found that Amundsen failed to disclose on 36 Uniform Applications for Securities Industry Registration or Transfer ("Forms U4"): (1) an injunction permanently enjoining Amundsen from engaging in any fraudulent acts, practices, or conduct in the offer or sale, and in connection with the purchase or sale, of any security and from appearing or practicing before the SEC; and (2) the revocation of his license to act as an accountant, in violation of NASD Rule 2110 and Interpretative Material ("IM") 1000-1 and FINRA Rules 1122 and 2010.[1] The Hearing Panel also concluded that Amundsen was

[1] Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a

[Footnote continued on next page]

subject to statutory disqualification because his actions were willful and involved the failure to disclose material information on his Forms U4. The Hearing Panel barred Amundsen and ordered him to pay hearing costs of $1,597.35. After an independent review of the record, we affirm the Hearing Panel's findings and sanctions.

I. Facts

A. Amundsen's Background

Amundsen entered the securities industry in 2003. Prior to 1983, Amundsen worked as an accountant. Between 1986 and 2003, Amundsen owned a small painting company and worked as a painter. Amundsen is not currently associated with a FINRA member firm.

B. Permanent Injunction and License Revocation

On February 15, 1983, the United States District Court for the Northern District of California entered a consensual Final Judgment of Permanent Injunction as to Joseph S. Amundsen (the "Judgment"). The Judgment permanently enjoined Amundsen from engaging in fraudulent activity "in the offer or sale of any security of [Olympic Gas and Oil, Inc. ("Olympic")] or any other issuer," and from engaging in any fraudulent activity "in connection with the purchase or sale of any security of [Olympic] or any other issuer." The Judgment further permanently enjoined Amundsen "from appearing or practicing before the [SEC] in any way." The bases for the Judgment were allegations by the SEC that Amundsen had violated Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77a, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §78, and Exchange Act Rule 10b-5 in connection with an audit he completed for Olympic. Specifically, the complaint (the "SEC Complaint") alleged that Amundsen had issued and signed, as a certified accountant, an audit report that falsely stated that Olympic's financial statements fairly represented its financial positions and results of its operations. The audit report was included with the Form 10 registration statement that Olympic filed with the SEC to register its common stock pursuant to Exchange Act Section 12(g). The audit report was distributed to broker-dealers and investors in connection with offers and sales of Olympic stock. Amundsen, without admitting or denying any of the allegations in the SEC Complaint, consented to the entry of the Judgment against him.[2]

[cont'd]

"Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50 (Oct. 2008). Amundsen's conduct spanned both sets of rules' existence.

[2] At the hearing below, Amundsen admitted that he read the SEC Complaint and Judgment in February 1983.

On October 10, 1986, the California Board of Accountancy revoked Amundsen's license to act as a Certified Public Accountant ("CPA") in California, citing the Judgment. In 2001, Amundsen applied to have his license to act as an accountant in California reinstated. On September 6, 2002, the California Board of Accountancy reinstated Amundsen's license. On August 20, 2002, Amundsen became licensed to act as an accountant in New York.

C. Failures to Disclose on Forms U4

When Amundsen entered the securities industry in 2003, he was working for Gettenberg Associates ("Gettenberg"), a consulting firm that provided financial and operations principals ("FINOPs") for New York Stock Exchange broker-dealers, and Buchanan Associates ("Buchanan"), a full-service compliance firm for small broker-dealers. Gettenberg asked Amundsen to become a FINOP for Sort Securities, LLC ("Sort Securities"), and Amundsen agreed.

On November 4, 2003, Amundsen filed a Form U4 with FINRA through Sort Securities. Amundsen passed the Series 27 examination and became registered with FINRA as a FINOP through Sort Securities on November 19, 2003. Thereafter, Amundsen passed the examinations for general securities principal, general securities representative, and registered options principal. Between November 4, 2003 and January 26, 2010, Amundsen filed, or caused to be filed, 36 separate Forms U4 by 34 FINRA member firms to act as a FINOP or in other capacities.[3] Amundsen admits he signed each Form U4 and accepts responsibility for the answers contained in all 36 Forms U4 that were filed on his behalf.[4]

At all times during the relevant period, Question 14H(1)(a) of the Form U4 asked, "[h]as any domestic or foreign court ever: (a) *enjoined* you in connection with any *investment-related* activity?"[5] On each of the 36 Forms U4 signed by Amundsen, he answered "No." At all times during the relevant period, Question 14F of the Form U4 asked, "[h]ave you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?" On each of the 36 Forms U4 signed by Amundsen, he answered "No."

---

[3] Although evidence in the record reflects that Amundsen filed, or caused to be filed, 37 Forms U4 by 35 member firms, the complaint alleged that Amundsen filed, or caused to be filed, 36 Forms U4 by 34 member firms. The discrepancy does not affect our decision, and the numbers alleged in the complaint are used throughout this decision.

[4] Between November 4, 2003 and January 26, 2010, Amundsen also prepared audited financial reports for FINRA member firms, and the member firms submitted the reports to the SEC.

[5] Italicized terms are defined in the Form U4.

D. Procedural History

By letter dated April 16, 2010, FINRA notified Amundsen that he was statutorily disqualified as a result of the Judgment.

On May 18, 2011, Enforcement filed a single-cause complaint, alleging that Amundsen willfully failed to disclose material information on 36 Forms U4. On June 12, 2011, Amundsen filed an answer. After conducting a one-day hearing, the Hearing Panel issued its decision on December 30, 2011. Amundsen appealed the decision.

II. Discussion

We affirm the Hearing Panel's findings that Amundsen violated NASD Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010 by failing to disclose the Judgment and the revocation of his license to act as an accountant. We also affirm the Hearing Panel's finding that Amundsen willfully failed to disclose material information on his Forms U4, which renders him statutorily disqualified.

A. Amundsen Violated NASD Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010

IM-1000-1 requires FINRA members and their associated persons to file, in connection with membership or registration as a registered representative, complete and accurate information.[6] *See Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994). This requirement applies to the Form U4, which member firms, FINRA, and potential customers use to screen applicants and evaluate their fitness to be in the securities industry. *See Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *16 (Oct. 20, 2011); *Jason A. Craig*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008). Filing a misleading Form U4 violates IM-1000-1 and the high standards of commercial honor and just and equitable principles of trade to which FINRA holds its members and their associated persons under NASD Rule 2110.[7] *See Scott*

---

[6] IM-1000-1 states that the filing of membership or registration information "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." On August 17, 2009, IM-1000-1 was replaced by FINRA Rule 1122. *FINRA Regulatory Notice 09-33*, 2009 FINRA LEXIS 96, at *6-7 (June 2009). Similar to IM-1000-1, FINRA Rule 1122 provides "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration 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."

[7] NASD Rule 2110 provides, "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." NASD Rule

[Footnote continued on next page]

Mathis, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *16 (Dec. 7, 2009), *aff'd*, 671 F.3d 210, 219 (2d Cir. 2012). Article V, Section 2(c) of FINRA's By-Laws requires and NASD By-Laws required that associated persons keep their Forms U4 "current at all times by supplementary amendments," which must be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

We find that Amundsen falsely answered two questions on 36 Forms U4 by failing to disclose the Judgment and the revocation of his license to act as an accountant.

1. Amundsen Falsely Answered the Form U4 Injunction Question

Question 14H(1)(a) asked, "[h]as any domestic or foreign court ever: (a) *enjoined* you in connection with any *investment-related* activity?" Throughout the relevant time period, the Form U4 defined "investment-related" broadly to mean "[p]ertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association)." *See, e.g.*, NASD Manual 472 (Nov. 2003). Because the SEC enjoined Amundsen in connection with investment-related activity, he falsely answered "No" to Question 14H(1)(a). The Judgment pertained to securities because it specifically enjoined Amundsen from engaging in fraudulent activity "in the offer or sale of any *security* of [Olympic] or any other issuer," and from engaging in any fraudulent activity "in connection with the purchase or sale of any *security* of [Olympic] or any other issuer."

Amundsen argues he correctly answered "No" to Question 14H(1)(a) because the Judgment was not "in connection with any investment-related activity" because it was an injunction against auditing a public company.[8] Amundsen's argument ignores the plain language of the Judgment and the broad definition of "investment-related" provided in the Form U4, which does not limit "investment-related" activity to acts consummated while a registered representative is working on behalf of a public company. *See Neaton*, 2011 SEC LEXIS 3719, at *29.

[cont'd]

2110 applies with equal force to FINRA members and their associated persons. *See* NASD Rule 0115(a). On December 15, 2008, NASD Rule 2110 was adopted as FINRA Rule 2010, and NASD Rule 0115(a) was adopted as FINRA Rule 0140(a). *See* 2008 FINRA LEXIS 50, at *30-32.

[8] Specifically, Amundsen asserts that, at the time of the injunction, he was acting as an accountant for a private company, and the private company used financial statements he prepared without his consent in a subsequent registration.

At the hearing below, Amundsen admitted that he did not review the language of the Judgment at the time he answered and signed the Forms U4.[9] When asked whether he reviewed the Form U4's definition of "investment-related," Amundsen was evasive. Instead of answering the question, Amundsen asserted that he spoke with Gettenberg and Buchanan about the Judgment, and collectively they decided the Judgment was not "investment-related" because it pertained to work Amundsen performed for a private company, and it was an injunction against auditing a public company. Even if we were to assume that Amundsen spoke with Gettenberg and Buchanan, no one reviewed the actual language of the Judgment at the time, which would be essential to determine whether the Judgment was "investment-related."

Regardless, it was Amundsen's duty to determine whether the information he provided on the Forms U4 was complete and accurate. *See Craig*, 2008 SEC LEXIS 2844, at *15 (holding that a registered representative cannot "shift his responsibility to comply with NASD rules to his firm"); *Rafael Pinchas*, 54 S.E.C. 331, 338 (1999) (holding that "a registered representative is responsible for his actions and cannot shift that responsibility to the firm or his supervisors").

Amundsen offered no credible, coherent support for his position, which contradicts the plain language of the Judgment and the Form U4's definition of "investment-related." *See Neaton*, 2011 SEC LEXIS 3719, at *29. Accordingly, we find that Amundsen falsely answered the Form U4 injunction question.

2. Amundsen Falsely Answered the Form U4 Professional License Question

Question 14F of the Form U4 asked, "[h]ave you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?" Because California revoked Amundsen's license to act as an accountant in 1986, Amundsen falsely answered "No" to Question 14F.

According to Amundsen, he answered "No" to Question 14F because his license to act as an accountant had been reestablished by 2002. At the hearing, Amundsen further explained he answered Question 14F the same way he would for his CPA certificate, which, according to Amundsen, provides, "[s]ince the last filing, has your license ever been revoked?" The Hearing Panel did not find Amundsen's explanation to be credible. We agree, and Amundsen has not provided substantial evidence sufficient to overturn this credibility determination on appeal. *See Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *18 (Aug. 22, 2008) ("We give great weight and deference to credibility determinations by a Hearing Panel, which can only be overcome by substantial record evidence."); *Dane S. Faber*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, at *17-18 (Feb. 10, 2004) ("Credibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference."). Question 14F is unambiguous,

---

[9] In fact, although Amundsen read the Judgment in 1983, he did not review it again, or even obtain a copy, from the time he registered with FINRA in November 2003 until after FINRA notified him that he was subject to statutory disqualification in April 2010.

and Amundsen was required – and failed – to disclose that California revoked his license to act as an accountant. Amundsen's explanation ignores the plain language of the question. *See Neaton*, 2011 SEC LEXIS 3719, at *29. The reinstatement of Amundsen's license to act as an accountant in 2002 is irrelevant to the explicit question posed by the Form U4.

Accordingly, we find that Amundsen falsely answered the Form U4 professional license question.

* * * *

For more than six years, Amundsen falsely answered "No" to two questions on 36 separate Forms U4.[10] These inaccuracies on the Forms U4 are in direct contravention of high standards of commercial honor and just and equitable principles of trade.[11] Accordingly, we affirm the Hearing Panel's findings that Amundsen violated NASD Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010.

B. Amundsen Is Statutorily Disqualified by Willfully Submitting False Forms U4

A person is subject to a statutory disqualification under Article III, Section 4 of FINRA's By-Laws and Exchange Act Section 3(a)(39)(F) if he, among other things:

> has willfully made or caused to be made in any application . . . to become associated with a member of . . . a self-regulatory organization, [or] report to be filed with 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 in any such application, report, or proceeding any material fact which is required to be stated therein.

15 U.S.C. § 78c(a)(39)(F).

---

[10] Amundsen argues that after he filled out the first Form U4 for Sort Securities, the 35 subsequent Forms U4 were somehow "self-populated" or "rolled over," either by FINRA or his employers. The Hearing Panel did not find Amundsen's explanation credible, and neither do we. *See Ortiz*, 2008 SEC LEXIS 2401, at *18; *Faber*, 2004 SEC LEXIS 277, at *17-18. Even if Amundsen's explanation were true, Amundsen admitted he signed all his Forms U4, and he alone is responsible for the information contained therein. *See Craig,* 2008 SEC LEXIS 2844, at *15; *Pinchas*, 54 S.E.C. at 338.

[11] Contrary to Amundsen's assertions, FINRA was not required to notify Amundsen that he answered questions incorrectly. *See Dep't of Enforcement v. FCS Secs.*, Complaint No. 2007010306901, 2010 FINRA Discip. LEXIS 9, at *18 (FINRA NAC July 30, 2010), *aff'd*, Exchange Act Rel. No. 64852, 2011 SEC LEXIS 2366 (July 11, 2011), *appeal docketed*, No. 11-4062 (2d. Cir. Oct. 4, 2011).

We find that Amundsen acted willfully in failing to disclose material information on 36 Forms U4 and, as a result, is subject to statutory disqualification.

1. Amundsen's Actions Were Willful

To find a willful violation, we must find "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). "A willfulness finding is predicated on [a person's] intent to commit the act that constitutes the violation– completing the Form U4 inaccurately." *Dep't of Enforcement v. Zdzieblowski*, Complaint No. C8A030062, 2005 NASD Discip. LEXIS 3, at *14 (NASD NAC May 3, 2005). To find that Amundsen's actions were willful, we need not find that Amundsen intentionally violated FINRA rules or acted with a culpable state of mind, only that he voluntarily provided false answers on the Forms U4. *See Scott Mathis v. SEC*, 671 F.3d 210, 216 (2d. Cir. 2012) (holding that the SEC did not abuse its discretion when it concluded that respondent willfully failed to disclose material information because he "voluntarily provided false answers on his Form U4"); *Neaton*, 2011 SEC LEXIS 3719, at *21-22 (finding that respondent, while aware of his underlying misconduct, voluntarily provided false answers on his Forms U4); *see also Wonsover*, 205 F.3d at 414 (finding that the law does not require that the willful actor "also be aware that he is violating one of the Rules or Acts") (internal quotations omitted).

The evidence shows that Amundsen voluntarily provided false answers on Question 14H(1)(a) and Question 14F on 36 Forms U4. Amundsen admits that he filed, or caused to be filed, the 36 Forms U4. Amundsen also admits that he signed each of the 36 Forms U4, which undercuts any argument that his actions were inadvertent. It is undisputed that Amundsen was aware of the Judgment because he read the SEC Complaint and consented to entry of the Judgment. It also is undisputed that Amundsen was aware of the revocation of his license to act as an accountant because he applied to have it reinstated in 2001. Despite being aware of the Judgment and the revocation of his license, Amundsen voluntarily falsely answered "No" to Question 14H(1)(a) and Question 14F on 36 Forms U4.[12]

On appeal, Amundsen contends that his failure to disclose the Judgment and revocation of his license was merely negligent and that he never intended to mislead. Security industry registrants, however, "must take responsibility for compliance and cannot be excused for lack of knowledge, understanding or appreciation of these requirements." *Neaton*, 2011 SEC LEXIS 3719, at *23 (internal quotations omitted).

Accordingly, Amundsen willfully violated NASD Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010.

---

[12] Even if Amundsen disclosed the Judgment to Buchannan and Gettenberg, "that disclosure would not relieve [him] of the obligation to provide correct answers on the Form U4." *Neaton*, 2011 SEC LEXIS 3719, at *26.

2. The Judgment and the Revocation of Amundsen's License to Act as an Accountant Are Material

"Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all the information that is reportable on the Form U4 is material." *Dep't of Enforcement v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NASD NAC Apr. 27, 2004). In the context of Exchange Act Rule 10b-5, a fact is material if a reasonable investor would view the disclosure of the omitted information as "having significantly altered the 'total mix' of information made available." *Mathis*, 671 F.3d at 219 (internal quotations omitted) (quoting *TSC Indus., Inc. v. Northway*, Inc., 426 U.S. 438, 449 (1976)). Applying this materiality standard to the circumstances here, we find that a reasonable employer, regulator, or member firm seeking a FINOP would have viewed as material the Judgment and revocation of Amundsen's license to act as an accountant.

First, the Judgment and the revocation of his license, which were reportable on the Form U4, are presumptively material. *See Knight*, 2004 NASD Discip. LEXIS 5, at *13. Both infractions reflect seriously on Amundsen's fitness to be in the securities industry.

Second, as a result of Amundsen's failure to disclose the Judgment, member firms unknowingly employed a statutorily disqualified individual in violation of Article V, Section 1 of FINRA's By-Laws. At all relevant times, Article V, Section 1 provided that no member firm shall permit any person associated with it to engage in its investment banking or securities business unless the firm has determined that the person "is not subject to a disqualification under Article III, Section 4 [of the By-Laws]." Pursuant to Article III, Section 4 of NASD's By-Laws and Article III, Section 4 of FINRA's By-Laws, Amundsen has been subject to statutory disqualification because he was enjoined in 1983 in connection with the purchase or sale of securities.[13] *See Robert J. Sayegh,* 52 S.E.C. 1110, 1110 (1996); *Rosario R. Ruggiero,* 52 S.E.C.

---

[13] Under Article III, Section 4(h) of NASD's By-Laws, a person is subject to "disqualification" with respect to association with a FINRA member firm if the person is "permanently . . . enjoined by order, judgment, or decree of any court of competent jurisdiction . . . from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security." Under Article III, Section 4 of FINRA's By-Laws, a person is subject to "disqualification" with respect to association with a FINRA member firm if the person is subject to any "statutory disqualification" as defined by Exchange Act Section 3(a)(39). Pursuant to Exchange Act Section 3(a)(39)(F), a person who is enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C) is subject to statutory disqualification. Exchange Act Section 15(b)(4)(C) specifies various types of injunctions, including injunctions that permanently enjoin a person from "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security." The Judgment permanently enjoined Amundsen from engaging in fraudulent activity "in the offer or sale of any *security* of [Olympic] or any other issuer," and from engaging in any fraudulent activity "in connection with the purchase or sale of any *security* of [Olympic] or any other issuer."

725, 726 (1996). The member firms relied on Amundsen's Forms U4 to provide accurate information when they hired him to act as FINOP, or in other capacities, and his nondisclosure caused the member firms to hire a statutorily disqualified person in violation of the By-Laws.

Third, member firms hired Amundsen to act as FINOP for their firms without the benefit of full disclosure of Amundsen's past. A FINOP, among other things, provides financial expertise to its firm and ensures compliance with securities regulation. The Judgment and the revocation of Amundsen's license to act as an accountant creates serious doubts regarding Amundsen's commitment to accuracy with respect to regulatory compliance and his ability to provide accurate financial information.

We find that Amundsen's failure to disclose the Judgment and the revocation of his license to act as an accountant significantly altered the total mix of information available. Accordingly, this information constituted material information that Amundsen should have disclosed on his Forms U4.

C. Amundsen's Collateral Attack of the Judgment Is Irrelevant

On appeal, Amundsen argues that the Judgment and corresponding injunction are unlawful, and therefore the present disciplinary action against him should be dismissed. We find Amundsen's argument without merit for numerous reasons.

In October 2010, Amundsen moved to vacate the Judgment in the United States District Court for the Northern District of California. The SEC opposed the motion, and the district court denied it and Amundsen's motion for reconsideration. Amundsen appealed the denial to the United States Court of Appeals for the Ninth Circuit. On March 5, 2012, the Ninth Circuit issued an order affirming the district court's denial of Amundsen's motion to vacate the injunction. *SEC v. Joseph S. Amundsen*, 470 F. App'x 651 (9th Cir. Mar. 5, 2012). And on April 20, 2012, the district court denied Amundsen's request to stay the injunction.[14] *SEC v. Joseph S. Amundsen*, No. C 83-00711 (N.D. Cal. Apr. 20, 2012). Despite Amundsen's arguments to the contrary, the Judgment and corresponding injunction remain lawful and valid.

Even if Amundsen succeeded in getting a court to vacate the injunction, Amundsen's answer of "No" to Question 14H(1)(a) would remain false.[15] Question 14H(1)(a) asked, "[h]as any domestic or foreign court ever: (a) *enjoined* you in connection with any *investment-related* activity?" At all times, the truthful answer to that question for Amundsen was, and would remain so even if the injunction was vacated, "yes." Where a respondent petitions a federal

---

[14] We take judicial notice of the Ninth Circuit's order and the district court's order. *See Am. Inv. Servs.*, 54 S.E.C. 1265, 1266 n.1 (2001) (holding the SEC may take notice of any material matter that is properly entitled to judicial notice by a federal district court); *Thomas R. Alton*, 52 S.E.C. 380, 386 (1995) (same).

[15] This argument also ignores that Amundsen falsely answered Question 14F, the Form U4 professional license question.

circuit court to vacate or overturn his injunction, "the pendency of such a petition would not alter the 'factual' existence of the injunction 'and its public interest implications.'" *Sayegh*, 52 S.E.C. at 1112 (affirming the NASD's denial of member's application for association with statutorily disqualified individual) (internal quotations omitted).

This action is limited to Amundsen's failure to disclose the Judgment and revocation of his license to act as an accountant. Amundsen "is not entitled to level a collateral attack against the [federal court] proceedings here." *Neaton*, 2011 SEC LEXIS 3719, at *43. Accordingly, Amundsen's collateral attack of the Judgment is irrelevant.[16]

III. Sanctions

The Hearing Panel barred Amundsen, finding his conduct egregious, and ordered him to pay hearing costs of $1,597.35. For the reasons discussed below, we affirm these sanctions.

The FINRA Sanction Guidelines ("Guidelines") for misconduct involving a Form U4 recommend a fine of between $2,500 and $50,000 and a suspension of five to 30 business days.[17] In egregious cases, such as those involving false, inaccurate, or misleading filings or the failure to disclose a statutorily disqualifying event, the Guidelines recommend consideration of a suspension of up to two years or a bar.[18] In evaluating the appropriate sanctions to impose, the Guidelines provide three principal considerations specific to Form U4 violations, two of which are relevant here: (1) the nature and significance of information at issue; and (2) whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.[19] These considerations are in addition to the principal considerations of the Guidelines applicable in every disciplinary case.[20]

First, we consider the nature of the information that Amundsen failed to disclose. The Judgment and the revocation of his license to act as an accountant were highly material. As we

---

16 On appeal, Amundsen attached documents to his briefs that were not part of the record. Since oral argument, Amundsen also has submitted letters containing argument to FINRA's Office of General Counsel. Amundsen failed to seek leave to introduce additional evidence, but, more importantly, failed to demonstrate why this proposed evidence is material to the proceeding. *See* Rule 9346(b). Nevertheless, we have considered the substance of the documents and arguments, and we find that they are irrelevant to liability and sanctions in this matter.

17 *FINRA Sanction Guidelines*, 69 (2011), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter *Guidelines*].

18 *Guidelines*, at 70.

19 *Id.* at 69.

20 *Id.* at 6-7.

concluded earlier, Amundsen's failure to disclose the Judgment and revocation of his license significantly altered the total mix of information available to member firms that hired Amundsen as their FINOP. Both the Judgment and the revocation of his license concern Amundsen's fitness to practice as a securities professional and would create serious doubt for member firms regarding Amundsen's commitment to accuracy with respect to regulatory compliance and his ability to provide accurate financial information.[21] Amundsen's failure to disclose such material information serves to aggravate his misconduct.

Next, we consider that Amundsen's misconduct resulted in a statutorily disqualified individual becoming associated with 34 separate member firms. At various times, Amundsen contended that he told at least some firms about the Judgment.[22] Other than Amundsen's testimony, there is nothing in the record to support this assertion. To the extent that Amundsen disclosed anything with respect to the Judgment to any of the 34 firms, we find the disclosure was grossly inadequate because Amundsen's interpretation of the Judgment is patently wrong, and he did not provide a copy of the Judgment to the firms. We are troubled that Amundsen expressed no remorse about exposing these firms to risk and potential liability with respect to employing a statutorily disqualified individual.

With respect to the revocation of his license, Amundsen is unsure whether he disclosed it to any of the 34 FINRA member firms. According to Amundsen, "it's not a question for me to deny or to advertise . . . . [I]t's a public document that [sic] when you Google my name." The securities laws require firms and individuals to make truthful and accurate disclosures in countless situations. Amundsen's assertions demonstrate his intentional and complete disregard for the disclosure required by FINRA rules and the Form U4.[23] On appeal, Amundsen contends that his failure to disclose the Judgment and revocation of his license was merely negligent and that he never intended to mislead. Amundsen's actions belie his claims, and we find that Amundsen intended to answer the relevant questions inaccurately.[24]

---

[21] Furthermore, the Judgment specifically enjoined Amundsen "from appearing or practicing before the [SEC] in any way," which bears on whether he could even function as a FINOP with a member firm that filed financial reports with the SEC.

[22] Amundsen also testified, "[the Judgment] is a matter of public record. Do you think [the member firms] would not ask me about this when they Google'd my name?"

[23] *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

[24] *See id.*

Amundsen's misconduct spanned more than six years.[25] Amundsen's failures involved numerous acts and a pattern of misconduct.[26] He executed 36 false and misleading Forms U4 and repeatedly failed to amend the Forms U4 despite ample opportunity to do so. Amundsen's willful misconduct was not the result of a momentary lapse of judgment, aberrant behavior, or negligence.[27] Indeed, Amundsen was active in the concealment of the Judgment and the revocation of his license to act as an accountant, demonstrating deliberativeness rather than mere oversight. Amundsen adopted self-serving, implausible interpretations of the relevant Form U4 questions and the Judgment, which were motivated by his desire to work in the securities industry in spite of his pertinent prior misconduct.[28]

Throughout these proceedings, Amundsen has asserted that he discussed the Judgment with his employers, Gettenberg and Buchanan, and together they decided he did not need to disclose the Judgment. To the extent that Amundsen is arguing that he relied on the advice of Gettenberg and Buchanan, we find this argument has no merit.[29] As we stated earlier, to the extent Amundsen disclosed anything with respect to the Judgment, we find the disclosure was grossly inadequate because Amundsen's interpretation of the Judgment is patently wrong, and he did not provide a copy of the Judgment to Gettenberg or Buchanan (or any of the member firms). Accordingly, any collective decision by Gettenberg, Buchanan, and Amundsen that the Judgment was not "investment-related" was made without the necessary information, for which Amundsen is to blame, and any reliance on that collective decision is therefore misplaced. Moreover, there is nothing in the record that suggests either Gettenberg or Buchanan told Amundsen not to disclose the revocation of his license to act as an accountant because it was later reinstated.

Contrary to Amundsen's assertions, his lack of a disciplinary history and unblemished career in the securities industry are not mitigating factors.[30] *See John B. Busacca, III,* Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787, at *64 n.77 (Nov. 12, 2010), *aff'd*, 449 F. App'x. 886 (11th Cir. 2011); *see also Philippe N. Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006) (stating that the absence of disciplinary history is not mitigating because "an associated person should not be rewarded for acting in accordance with his duties as a securities professional").

---

25 *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 9).

26 *See id.* (Principal Considerations in Determining Sanctions, No. 8).

27 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

28 *See id.* (Principal Considerations in Determining Sanctions, No. 17).

29 *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 7).

30 Notwithstanding Amundsen's assertions, we consider the Judgment to be a significant blemish in his career in the securities industry.

The securities industry "presents a great many opportunities for abuse and overreaching, and depends very heavily upon the integrity of its participants." *Bernard D. Gorniak*, 52 S.E.C. 371, 373 (1995) (internal quotations omitted). True and complete answers to Form U4 questions are therefore "essential to a meaningful system of self-regulation" and "vital to determining the fitness of an applicant for registration as a securities professional." *Dep't of Enforcement v. Craig*, Complaint No. E8A2004095901, 2007 FINRA Discip. LEXIS 16, at *25 (FINRA NAC Dec. 27, 2007), *aff'd*, 2008 SEC LEXIS 2844 (Dec. 22, 2008).

We find Amundsen's failure to acknowledge his improprieties and basic facts, truth, and reality to be disconcerting.[31] Amundsen has not accepted responsibility for his failures to disclose. Further, during this appeal, Amundsen has mischaracterized the findings of the district court and Ninth Circuit. As a result, and for the other reasons discussed herein, we find Amundsen lacks the integrity and fitness for registration as a securities professional.

We find that Amundsen's misconduct was egregious and demonstrated a lack of respect for FINRA rules and processes and the member firms that employed him. Amundsen's repeated failures to disclose material information, coupled with his failure to acknowledge his improprieties, demonstrate that he is unable to meet the high standards required of those employed in the securities industry. Therefore, a bar in all capacities is the proper sanction. A bar, which is consistent with the Guidelines, will best serve to protect the investing public and deter others from failing to disclose material information when seeking registration through a FINRA member. *See Edward John McCarthy v. SEC*, 406 F.3d 179, 188-89 (2d Cir. 2005).

---

[31] *Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 2, 12).

IV. Conclusion

Amundsen willfully failed to disclose material information on 36 Forms U4, in violation of NASD Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010. As a result, Amundsen is subject to statutory disqualification. For his misconduct, we bar Amundsen from associating in any capacity with any FINRA member, effective upon service of this decision. We also affirm the order that Amundsen pay hearing costs of $1,597.35 and order that he pay appeal costs of $1,455.75.[32]

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith, Senior Vice President
and Corporate Secretary

---

[32] We have considered and reject without discussion all other arguments advanced by the parties.