

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

The Continued Association of

Jesse B. Shelmire, IV

as a

General Securities Representative and
General Securities Principal

with

Stonegate Capital Markets, Inc.

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

SD-2151

August 17, 2018

I. Introduction

On February 21, 2017, Stonegate Capital Markets, Inc. (the “Firm” or “SCM”) filed a Membership Continuance Application (the “Application”) with FINRA’s Department of Registration and Disclosure. The Application seeks to permit Jesse B. Shelmire, IV, a person subject to statutory disqualification, to continue to associate with the Firm as a general securities representative and a general securities principal. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(a), FINRA’s Department of Member Regulation (“Member Regulation”) recommended to the Chairperson of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, that it approve Shelmire’s continued association with the Firm pursuant to the terms and conditions set forth below.

For the reasons explained below, we approve the Application to permit Shelmire to continue to associate with the Firm as a general securities representative and general securities principal, as described herein.

II. The Statutorily Disqualifying Event

Shelmire is statutorily disqualified due to FINRA’s acceptance, on October 24, 2016, of a Letter of Acceptance, Waiver and Consent (“AWC”). The AWC found that Shelmire willfully failed to disclose on his Uniform Application for Securities Industry Registration or Transfer

(“Form U4”) two federal tax liens filed against him totaling approximately \$288,000.¹ The IRS notified Shelmire of the liens in August 2013, but he failed to disclose them on his Form U4 until December 2014.² For these disclosure failures, FINRA suspended Shelmire for three months, and fined him \$5,000. Shelmire has served his suspension and paid the fine in full.

In the Application, Shelmire states that in 2013, he approached the IRS concerning unpaid taxes that he owed and it agreed to a payment plan. Shelmire states that although he knew that the IRS filed liens against him, he did not realize that he needed to update his Form U4. Shelmire “understand[s] now that my failure to timely update my U-4 constituted a willful violation.”

III. Background Information

A. Shelmire

Shelmire first registered as general securities representative in January 1982, as a municipal securities principal in September 1992, and as a general securities principal in December 1999. He also passed the uniform securities agent state law examination in February 1982 and the national commodities futures examination in August 1986. He is also registered as an operations professional and investment banking representative. Shelmire has been associated with the Firm since May 1999 (with a previous stint at the Firm from April 1989 until November 1993). He was previously associated with eight other member firms.

¹ FINRA’s By-Laws provide that a person is subject to “disqualification,” and thus must seek and obtain FINRA’s approval prior to associating with a member firm, if he is disqualified under Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”). *See* FINRA By-Laws, Art. III. Exchange Act Section 3(a)(39)(F) provides that a person is subject to statutory disqualification if he has willfully made a false or misleading statement of material fact, or has omitted to state a material fact required to be disclosed, in any application or report filed with a self-regulatory organization.

Question 14.M of Form U4 asks, “Do you have any unsatisfied judgments or liens against you?” Article V, Section 2(c) of FINRA’s By-Laws requires that an associated person keep his Form U4 current at all times and to update information on the Form U4 within 30 days of learning of the information. Further, FINRA Rule 1122 states that, “[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.”

² Shelmire is currently paying these obligations pursuant to an installment agreement with the IRS. FINRA’s Central Registration Depository (“CRD”®) shows that in addition to the tax liens underlying the AWC, the IRS filed five additional liens against Shelmire from 1993 through 2007 (all of which Shelmire has satisfied).

CRD lists four outside business activities for Shelmire: (1) president of Lazarus Investments, LP, a non-investment related, family holding company (to which he devotes four hours per month); (2) president of Lazarus Management LLC, a non-investment related entity, engaging in income tax preparation services (two hours per month); (3) chief executive officer and board member of Stonegate Capital Partners, Inc. (“Stonegate Partners”), an investor relations advisory firm that “generates [investment] banking leads for” the Firm (80 hours per month); and (4) co-chief executive officer and board member of Griffith Shelmire Partners, Inc. (“Holding Company”), a non-investment related entity, which is the holding company for Stonegate Partners and the Firm (to which he devotes two hours per month).

CRD also shows that in November 2016, Shelmire agreed to an order with the Texas State Securities Board, which was based on the same misconduct underlying the AWC. The Texas State Securities Board suspended Shelmire for 120 days.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Shelmire.

B. The Firm

The Firm has been a FINRA member since October 1972. It has one Office of Supervisory Jurisdiction located in Dallas, Texas. Holding Company wholly owns the Firm, and Shelmire and Scott Griffith (“Griffith”) each own 50% of Holding Company. The Firm employs four registered principals and 10 registered representatives. The Firm does not employ any other statutorily disqualified individuals.

1. Routine Examinations

FINRA conducted the Firm’s most recent examination in 2015. This examination resulted in an April 2016 Cautionary Action for: failing to accurately disclose litigation and a settlement against the Firm, and including an impermissible confidentiality clause in the settlement; permitting an unregistered individual to engage in activity requiring registration; failing to accurately record a settlement in the Firm’s books and records; maintaining inadequate procedures concerning the supervision of supervisory personnel; and maintaining inadequate net capital. The Firm responded in writing that it corrected the deficiencies noted.

FINRA also issued the Firm a Cautionary Action in July 2012 in connection with the Firm’s 2012 cycle examination. FINRA cited the Firm for failing to adequately evidence email review and failing to file an annual attestation pursuant to NASD Rule 2711(i). The Firm responded in writing that it corrected the deficiencies noted.

2. Regulatory History

In October 2001, the Commission found that the Firm and other broker-dealers willfully violated Exchange Act Section 17(a) and Exchange Act Rule 17a-5 by failing to timely file a completed form BD-Y2K Report. The Commission censured the Firm and fined it \$15,000. *See Stonegate Securities, Inc.*, 55 S.E.C. 346 (2001).

The record shows no other recent regulatory or disciplinary history against the Firm.

IV. Shelmire's Proposed Business Activities and Supervision

The Firm proposes that Shelmire will continue to work from the Firm's home office located in Dallas, Texas, where he will function as a general securities representative and a general securities principal.³ His activities will include soliciting investment banking business on behalf of the Firm, including raising capital for publicly traded and private companies.

The Firm proposes that Griffith will serve as Shelmire's primary on-site supervisor. Griffith does not currently supervise any other individuals, and he serves as the Firm's president and chief compliance officer. He first registered as a general securities representative in October 1979, and as a general securities principal in December 1999. Griffith also passed the uniform securities agent state law examination in November 1979, and he is also registered as an operations professional and investment banking representative. Griffith has been associated with the Firm since October 1992. He was previously associated with two member firms.

CRD lists several outside business activities for Griffith, including the following to which he currently devotes time on a monthly basis: (1) member of Lake Athens Partners, LLC (which focuses on real estate development and to which he expects to devote approximately 10 hours per month until the property held by this entity is sold, at which time he will not spend any time on this outside business activity); and (2) co-chief executive officer, president and director of Stonegate Partners (160 hours per month).⁴

CRD lists several matters against Griffith. In November 1984, Griffith pled nolo contendere to possession of a controlled substance. CRD states that Griffith was fined \$360, given a two-year sentence of deferred adjudication, and released from probation in January 1987 (at which time the case was dismissed).

³ Shelmire's activities as a general securities principal will be limited to his participation as a member of the board of directors of the Firm (including attending annual corporate meetings and signing documents on behalf of the board, such as annual corporate documents, minutes or any other organizational documents). Further, the Firm has represented that as one of its indirect owners, Shelmire will not supervise any individuals and will "not make any independent managerial or business decisions on behalf of SCM. All decisions, to which Shelmire is involved, will be made in conjunction with the other stockholders of this entity."

⁴ With respect to Stonegate Partners, the Firm states that Griffith currently spends all of his time at Stonegate Partners' offices (which are located in the same space as the Firm's offices). Notwithstanding CRD's report of the monthly hours Griffith spends on Stonegate Partners, the Firm states that Griffith's "time is spent on broker dealer supervision, compliance and operations. All his other outside business activities [are] limited to spending 5-10 hours per month (mostly weekends)."

In November 1992, a customer filed an arbitration claim against Griffith alleging misrepresentations. The customer alleged \$71,000 in damages. Griffith settled this matter for \$20,000.

In January 1996, a customer filed an arbitration claim against Griffith alleging unsuitable recommendations. The customer alleged \$211,300 in damages. The matter was settled for \$32,500, and Griffith did not personally contribute to the settlement.

Finally, in November 1998, the Texas State Securities Board reprimanded Griffith for failing to disclose on his Form U4 the felony charge underlying his November 1984 plea. Texas fined Griffith \$500.

If Griffith is unavailable, the Firm designated Marco Andres Rodriguez (“Rodriguez”) to serve as Shelmire’s alternate, on-site supervisor. Rodriguez does not supervise any individuals at the Firm. Rodriguez first registered as an investment company and variable contracts products limited representative in June 1993, as an investment company and variable contracts products limited principal in February 1995, as a general securities representative in January 1996, as a research analyst in January 2005, as an introducing broker-dealer financial and operations principal in August 2009, and as a general securities principal in December 2011. He also passed the uniform securities agent state law examination in June 1993, the uniform investment adviser law examination in January 1997, and is also registered as an investment banking representative and an operations professional. Rodriguez has been with the Firm since December 2007. He was previously associated with three member firms.

As an outside business activity for Rodriguez, CRD lists Marco Associates, an investment-related business performing financial modeling, valuation, and investment analysis. CRD states that Rodriguez devotes approximately 10-15 hours per week to this outside business activity.

The record shows no disciplinary or regulatory proceedings, complaints, or arbitrations against Rodriguez.

V. Member Regulation’s Recommendation

Member Regulation recommends approving the Firm’s request for Shelmire to continue to associate with the Firm as a general securities representative and general securities principal, subject to the terms and conditions of heightened supervision described below.

VI. Discussion

We have carefully considered the entire record in this matter. Based on this record, and pursuant to the Commission’s controlling decisions in this area, we approve the Firm’s Application to continue to employ Shelmire as a general securities representative and general securities principal, subject to the supervisory terms and conditions set forth below.

A. The Legal Standards

We acknowledge that Shelmire, as a registered representative, was responsible for knowing the rules of the securities industry and for timely updating his Form U4. *See, e.g., Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) (“Every person submitting registration documents [to FINRA] has the obligation to ensure that the information printed therein is true and accurate.”), *aff’d*, 40 F.3d 1240 (3d Cir. 1994) (table). The SEC has emphasized that Form U4 “is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public.” *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *25-26 (Nov. 9, 2012). A registered representative’s financial problems “raise concerns about whether [he] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional.” *Id.* at *32.

We also recognize, however, that FINRA weighed the gravity of Shelmire’s failures to disclose when it agreed to the AWC in October 2016. After considering Shelmire’s entire history in the securities industry, FINRA concluded that a three-month suspension and \$5,000 fine were appropriate sanctions for his misconduct. Shelmire served this suspension and paid the fine in full. In such circumstances, the Commission has instructed FINRA to evaluate a statutory disqualification application pursuant to the standards enunciated in the Commission’s decisions in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), and *Arthur H. Ross*, 50 S.E.C. 1082 (1992). *See May Capital Group, LLC* (hereinafter “*Rokeach*”), Exchange Act Release No. 53796, 2006 SEC LEXIS 1068, at *21 (May 12, 2006) (holding that FINRA must apply *Van Dusen* standards to the membership continuance applications of statutorily disqualified individuals whose disqualifications resulted from FINRA enforcement action).

Van Dusen and *Rokeach* provide that in situations where an individual’s misconduct has already been addressed by the Commission or FINRA, and sanctions have been imposed for such misconduct, FINRA should not consider the individual’s underlying misconduct when it evaluates a statutory disqualification application. The Commission stated that when the period of time specified in the sanction has passed, in the absence of “new information reflecting adversely on [the applicant’s] ability to function in his proposed employment in a manner consonant with the public interest,” it is inconsistent with the remedial purposes of the Exchange Act and unfair to deny an application for re-entry. *Van Dusen*, 47 S.E.C. at 671.

The Commission also noted in *Van Dusen*, however, that an applicant’s re-entry is not “to be granted automatically” after the expiration of a given time period. *Id.* Instead, the Commission instructed FINRA to consider other factors, such as: (1) other misconduct in which the applicant may have engaged; (2) the nature and disciplinary history of the prospective employer; and (3) the supervision to be accorded the applicant. *Id.*

B. Application of the *Van Dusen* Standards

After applying the *Van Dusen* standards to this matter, we have determined to approve the Firm's Application to continue to employ Shelmire.

First, the record does not show any complaints, regulatory actions, or criminal history since the AWC. Given the expiration of time for the suspension imposed upon Shelmire, and the teachings of *Van Dusen*, he is now permitted to seek re-entry to the securities industry.

Second, the Firm does not have any recent formal disciplinary history, represents that it has addressed the issues raised in the Cautionary Actions issued by FINRA, and has in place well-qualified individuals to supervise Shelmire. Griffith, Shelmire's primary proposed supervisor, is well qualified to supervise a statutorily disqualified individual such as Shelmire. We agree with Member Regulation that the several matters listed on Griffith's CRD should not prevent him from stringently supervising Shelmire. Similarly, Rodriguez is qualified to supervise Shelmire. We find nothing in the record to suggest that the Firm will be unable to provide the stringent supervision necessary for a statutorily disqualified individual such as Shelmire.

Third, based on the record before us, we find that the Firm's proposed plan of supervision is sufficiently stringent and comprehensive. Importantly, the plan provides for an independent consultant's oversight of the Firm's supervision of Shelmire, who holds an indirect ownership interest in the Firm. The independent consultant will verify, on a semi-annual basis, the Firm's compliance with the heightened supervisory plan and that Shelmire's supervisors are able to independently supervise him "free from intimidation, coercion, or fear of retribution." We are satisfied that the following heightened supervisory procedures will enable the Firm to reasonably monitor Shelmire's activities on a regular basis:⁵

1. In light of Shelmire's equity position in SCM's corporate parent, Griffith Shelmire Partners, Inc., and to ensure the independence of Shelmire's supervisor, SCM shall engage Valynda A. Ewton, President of Broker Dealer Concepts, Inc., as an independent compliance consultant;
2. Ms. Ewton shall verify that Shelmire's primary supervisor, Griffith, fully performs his obligations under the supervisory plan in an environment where such performance is free from intimidation, coercion, or fear of retribution;

⁵ Items 8, 10, and 18 are supervisory conditions that are standard supervisory procedures for representatives of the Firm.

3. Ms. Ewton will certify on a semi-annual basis that Shelmire's activities were monitored appropriately and in accordance with his supervisory plan. Copies of these certifications will be maintained and kept segregated for ease of review during any statutory disqualification examination;
4. The written supervisory procedures for SCM will be amended to state that Griffith will serve as the primary supervisor for Shelmire. If at any time Griffith is not available to perform these functions, his responsibilities shall be performed by Rodriguez, who has been designated as Shelmire's alternate supervisor;
5. In the event that Rodriguez performs any duties required under this plan while Griffith is unavailable, Griffith will review such actions taken by Rodriguez and certify, within two business days, that these actions comply with the obligations of this plan of supervision. Records of the certifications will be kept segregated and maintained for ease of review during any statutory disqualification examination;
6. Shelmire will not maintain discretionary accounts;
7. Shelmire will not act in a supervisory capacity or supervise any registered representatives at the Firm. Shelmire will be registered at the Firm as a General Securities Principal (Series 24); however, he will only maintain his principal registration as it relates to his role as a member of the board of directors of SCM. As a board member of SCM, Shelmire will engage in the following activities: attend annual corporate meetings and sign documents on behalf of the board including, annual corporate documents, minutes or any other organizational documents;
8. Shelmire will be supervised by Griffith in the home office of SCM, located at 8201 Preston Road, Suite 325, Dallas, Texas 75225;
9. Shelmire will not be permitted to execute any private placement or investment banking services agreements without supervisory approval. Griffith will review and pre-approve any private placement agreement or any other investment banking services agreement procured by Shelmire. Griffith will retain copies of the agreement and keep them segregated for ease of review during any statutory disqualification examination;
10. Griffith will be responsible for handling and supervising all of Shelmire's investment banking transactions;
11. Shelmire can assist in procuring new investment banking business but his participation in these instances will be limited to structuring the transactions or soliciting sales from retail or institutional investors;

12. Griffith will review all written incoming SCM-related correspondence (including email communications) addressed to or relating to Shelmire upon arrival, and will review all SCM-related outgoing correspondence prior to the time it is sent;
13. For purposes of client communication, Shelmire will only be allowed to use an email account held at SCM, with all emails being filtered through SCM's email system. If Shelmire receives a SCM-related email message in another email account outside SCM, he will immediately forward that message to his SCM email account. Shelmire will also inform SCM of all outside email accounts that he maintains and will provide access to the accounts upon request. Griffith will maintain the emails and keep them segregated for ease of review during any statutory disqualification examination. For purposes of this paragraph, a "client communication" shall be understood to refer to communications with: (a) customers or clients of SCM; and (b) investors or potential investors in any new company formed, organized or controlled by Shelmire that conducts any kind of private placement agency or other investment banking services agreement procured by Shelmire or SCM;
14. Griffith will be present at any and all board meetings attended by Shelmire and during those meetings he will be supervising Shelmire in accordance with this plan;
15. The Firm will be required to retain copies of the minutes from any and all board meetings. The minutes will be reviewed during any statutory disqualification examination to ensure, among other things, that Shelmire and Griffith were present during the meetings and to assess their compliance with the plan of supervision. The copies of the minutes shall be maintained and kept segregated for ease of review during any statutory disqualification examination;
16. With respect to any business meeting attended or to be attended by Shelmire, where one of the principal purposes of the meeting is to establish or develop relationships that could mature into a customer or investor relationship with SCM, Griffith shall do the following: (a) review and pre-approve in writing any written materials to be distributed or viewed by the group at such meetings; (b) if Griffith is in attendance at the meeting, certify that the meeting was held in compliance with this supervisory plan and all applicable laws, rules and regulations; and (c) if Griffith is not in attendance, Shelmire will disclose to Griffith the details of the meeting after it occurs. Griffith will certify in writing his receipt of this disclosure and will maintain copies of all written materials and keep them segregated for ease of review during any statutory disqualification examination;

17. Using a third party vendor, Griffith will conduct semi-annual credit checks and will subsequently review Shelmire's regulatory disclosures to ensure that he has complied with his regulatory disclosure obligations. Griffith will document the outcome of each credit check and he will maintain and keep segregated all documentation related to the credit checks and reviews for ease of review during any statutory disqualification examination;
18. All complaints pertaining to Shelmire, whether verbal or written, will be immediately referred to Griffith for review. Griffith will prepare a memorandum to the file with full details as to the review, investigation and resolution of the matter. Documents pertaining to these complaints should be kept segregated for ease of review during any statutory disqualification examination;
19. SCM must obtain prior approval from Member Regulation if it wishes to change Shelmire's responsible supervisor or alternate supervisor from Griffith or Rodriguez to another person, or make any changes to the plan of supervision;⁶ and
20. Griffith must certify quarterly (March 31st, June 30th, September 30th, and December 31st) that he and Shelmire are in compliance with all of the above conditions of this heightened supervisory plan.

FINRA certifies that: (1) Shelmire meets all applicable requirements for the proposed employment; (2) the Firm is not a member of any other self-regulatory organization; (3) the Firm has represented that Shelmire is not related to Griffith, Rodriguez, or the independent consultant by blood or marriage; and (4) the Firm does not employ any other statutorily disqualified individuals.

⁶ We have clarified that the Firm may not make any changes to the heightened supervisory plan, absent Member Regulation's prior approval.

VII. Conclusion

Accordingly, we approve the Firm's Application to employ Shelmire as a general securities representative and general securities principal, subject to the above-mentioned heightened supervisory procedures. In conformity with the provisions of Exchange Act Rule 19h-1, the continued association of Shelmire with the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Jennifer Mitchell Piorko
Vice President and Deputy Corporate Secretary