

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Moustafa M. Zayed
New York, NY,

Respondent.

DECISION

Complaint No. 2006003834901

Dated: August 19, 2010

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

Appearances

For the Complainant: Leo Orenstein, Esq., Noel C. Downey, Esq., and Lynn M. Kaseta, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Pursuant to NASD Rule 9311, Moustafa M. Zayed (“Zayed”) appeals a December 11, 2008 Hearing Panel decision.¹ In that decision, the Hearing Panel found that Zayed violated NASD Rule 2110 and IM-1000-1 by willfully filing several inaccurate Uniform Applications for Industry Registration or Transfer (“Forms U4”) that failed to disclose that: (1) he was named as a defendant in a civil complaint; (2) a \$286,155.53 default judgment in New Jersey had been entered against him; and (3) a \$18,063.97 default judgment in Illinois had been entered against him. For his violations, the Hearing Panel suspended Zayed in all capacities for nine months and

¹ Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “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* (Oct. 2008). Because the complaint in this case was filed before December 15, 2008, the procedural rules that apply are those that existed on December 14, 2008. The conduct rules that apply are those that existed at the time of the conduct at issue.

fined him \$10,000. After reviewing the record, we affirm the Hearing Panel's findings and sanctions.

I. Background

Zayed entered the securities industry in June 1992 and first became registered with FINRA as a general securities representative in October 1992. In January 1999, he became registered as a general securities principal. During the period of the violations, Zayed was registered in each of these capacities with Skyebanc, Inc. ("Skyebanc" or "the Firm"). Zayed is not currently associated with any FINRA member.

II. Facts

A. Civil Complaint

On August 4, 2004, Zayed and his wife were named as defendants in a civil complaint filed in the United States District Court for the District of New Jersey (the "NJ civil litigation"). The civil complaint alleged that, among other things, Zayed was liable for breach of contract, fraud, misrepresentation, and conversion of his aunt's and uncle's (the "plaintiffs") funds that had been deposited into an account managed by Zayed.² Zayed testified before the Hearing Panel that the civil litigation was frivolous and was initiated by the plaintiffs to pressure Zayed's father, who lived in Egypt, to cooperate with them on an Egyptian real estate transaction.

On August 30, 2004, the attorney for the plaintiffs in the NJ civil litigation sent documents to Zayed that included a cover letter. The cover letter stated that it enclosed a "Notice of Lawsuit and Request for Waiver of Service" ("Notice of Lawsuit"), and a copy of the complaint that had been filed.³ The cover letter also stated that the plaintiffs would prefer not to pursue litigation against the family, but they would "vehemently prosecute their claims" unless, by September 13, 2004, Zayed supplied documentation of the investments that he had made on the plaintiffs' behalf.

Zayed admitted that he received the cover letter, but claimed that the letter did not include a copy of the Notice of Lawsuit or the complaint. On May 31, 2005, however, Zayed submitted a signed certification to the New Jersey District Court stating that:

² According to Zayed, these funds were placed in his wife's account at Charles Schwab. The complaint in the NJ civil litigation alleges that the funds were deposited into a Fleet Bank account registered in the name of Zayed's wife.

³ The Notice of Lawsuit stated that a "lawsuit has been commenced against you . . . and has been assigned docket number 04-3695." The complaint alleged a monetary loss of \$277,000, which arose out of an agreement between the parties that Zayed would invest the plaintiffs' funds in the stock market.

I received from the Plaintiff (sic) a copy of the Complaint and a request for waiver of service of summons on or about August 31, 2004. I contacted the Plaintiff's (sic) counsel to discuss the matters in the Complaint. At that time, I refused to execute the requested Waiver.

Similarly, on January 9, 2006, Zayed submitted a signed declaration to the New Jersey District Court, in which he admitted that he received the August 30, 2004 letter and immediately called the plaintiffs' attorney to discuss the matter. Despite the fact that the cover letter indicated that it also enclosed the Notice of Lawsuit and the complaint, there was no statement in Zayed's declaration that either of these enclosures were missing. On January 26, 2006, Zayed submitted a reply declaration to the district court admitting that he received and reviewed the August 30, 2004 cover letter. In the reply declaration, Zayed made no claim that the Notice of Lawsuit or complaint was not attached to the cover letter.

Although Zayed admitted in these declarations that he received the complaint and was notified in August 2004 that he was named in the NJ civil litigation, he did not amend his Form U4 to disclose the litigation until October 12, 2006, after FINRA started its investigation of the matter.⁴

B. First Default Judgment

In November 2004, the plaintiffs in the NJ civil litigation filed a motion for entry of a default, serving a copy on Zayed by regular mail. Three weeks before the New Jersey District Court entered the default judgment, Zayed wrote to his attorney, attaching "brief answers to all claims in the complaint," with the goal of avoiding a default judgment. On April 5, 2005, Zayed's attorney wrote to the plaintiffs' attorney in the NJ civil litigation stating that he had been retained by Zayed and acknowledging that plaintiffs "have a pending motion to enter final judgment based upon default."

On April 11, 2005, the New Jersey District Court entered a default judgment in the amount of \$286,155.53 against Zayed arising from the NJ civil litigation. Zayed learned of the default judgment no later than May 26, 2005, when his attorney filed Zayed's signed certification in support of his motion to vacate the default judgment. On May 31, 2005, Zayed filed another certification to support his motion to vacate the default judgment. Finally, Zayed filed two affidavits in January 2006, each asking the court to vacate the default judgment. Zayed,

⁴ Question 14I(1) on the Form U4 required Zayed to disclose whether he had "ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or *civil litigation* which alleged that you were involved in one or more sales practice violations and which (a) is still pending, or (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or (c) was settled for an amount of \$10,000 or more?" (emphasis added.)

however, failed to disclose the default judgment on his Form U4 until October 12, 2006, after FINRA started an investigation of the matter.⁵

As with the filing of the NJ civil litigation, Zayed had been notified that a judgment had been entered against him, but also failed to disclose it on his Form U4. Zayed asserts that his failure to disclose the default judgment from the NJ civil litigation was the result of his: (1) belief that the Form U4 required only disclosure of felonies or bankruptcies; and (2) being unaware of the default judgment until November 21, 2005.⁶

C. Second Default Judgment

On June 15, 2004, a law firm in Illinois brought a civil suit against Zayed for failure to pay attorney fees earned when the firm represented Zayed in civil litigation in Illinois (“attorney fees litigation”). On September 23, 2004, the Circuit Court of Du Page County entered an \$18,063.97 default judgment against Zayed in the attorney fees litigation.

On October 11, 2005, Zayed filed a *pro se* motion to vacate the default judgment in the attorney fees litigation, asserting that the plaintiff had not properly served him. Notwithstanding Zayed’s assertion, Zayed executed an affidavit in the attorney fees litigation, stating that on “August 27, 2004, I became aware of the present lawsuit, as my children, then aged 9 and 10, discovered a Summons and Complaint on a porch at my residence the prior night.” The affidavit then states that “[i]n or about July 2005, while checking my credit, I discovered that a judgment had been entered against me.” Zayed, however, submitted three Forms U4 between October 10, 2005, and October 11, 2006, on which he answered “no” to Question 14M, indicating that he had no outstanding judgments or liens against him.

Zayed asserts that his failure to disclose the default judgment from the attorney fees litigation was due to his belief that he was not required to report such judgments on the Form U4. Zayed further asserts that had he known of his obligation to report this judgment, he would have done so.⁷

⁵ Question 14M on the Form U4 asks whether the person filing the form has “any unsatisfied *judgments* or liens” against that person. (emphasis added.)

⁶ Zayed asserts that Richard Galterio (“Galterio”), the chief operating officer of Skyebanc, first made him aware of the default judgment. By Zayed’s account, Galterio told him in November 2005 that the plaintiffs’ attorney in the NJ civil litigation had inquired about garnishing Zayed’s commissions to satisfy the judgment.

⁷ Zayed claims that he did not have the Form U4 in front of him when he first learned of the default judgment in the attorney fees litigation, and that consequently, “he had no recollection” that the Form U4 required him to report the judgment.

III. Procedural History

FINRA conducted a routine examination of the Firm in June 2006 that involved the random review of emails from the Firm's archiving system. From this review, FINRA learned that Zayed was subject to a garnishment order due to the default judgment entered against him in the attorney fees litigation. This discovery triggered FINRA's investigation of Zayed and prompted this disciplinary action.

On January 14, 2008, FINRA's Department of Enforcement ("Enforcement") filed a three-cause complaint against Zayed, alleging that on multiple occasions, he willfully failed to disclose material information on his Forms U4. On February 10, 2008, Zayed filed an answer to the complaint generally denying the allegations. The Hearing Panel conducted a hearing on July 22, 2008. In a decision issued on December 11, 2008, the Hearing Panel found Zayed liable under each cause alleged in the complaint. On January 15, 2009, Zayed appealed the Hearing Panel's decision. Oral argument was held on November 2, 2009.

IV. Discussion

Article V, Section 2(c) of FINRA's By-Laws requires that associated persons keep their Forms U4 "current at all times by supplementary amendments," and that such amendments shall be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." The questions on a Form U4 are a critical means of providing FINRA with the information needed to protect investors.⁸ Consequently, NASD Rule 2110 and IM-1000-1 require associated persons to answer the questions on a Form U4 completely and accurately.⁹ Zayed did not disclose material information for more than two years. Specifically, Zayed failed

⁸ FINRA uses the Form U4 to screen and monitor applicants seeking to participate in the securities industry. *See Thomas R. Alton*, 52 S.E.C. 380, 382 (1995) (stating that FINRA uses the Form U4 "to determine the fitness of applicants for registration as securities professionals"). In addition, the information reportable on a Form U4 is important to the public. *Cf. Douglas J. Toth*, Exchange Act Rel. No. 58074, 2008 SEC LEXIS 1520, at *31 (July 1, 2008) (discussing how certain information reported on a Form U4 is important to state regulators, broker-dealers, as well as the investing public).

⁹ NASD IM-1000-1 provides that the filing of registration information that is "incomplete or inaccurate so as to be misleading . . . or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade" in violation of NASD Rule 2110. *See also Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) (stating that "[e]very 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) (table). A violation of any FINRA Rule also is a violation of NASD Rule 2110, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade. NASD Rule 0115 makes all FINRA rules applicable to both FINRA members and all persons associated with FINRA members.

to disclose that he had been named as a defendant in the NJ civil litigation and that two default judgments had been entered against him.

“The test of materiality is whether the omitted information would have ‘significantly altered the total mix of information made available.’” *Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976), *appeal filed*, No 10-429-ag (2d Cir. Feb. 3, 2010)). Applying this standard, the Commission has previously held that an employee’s undisclosed financial obligations were material to an employer.¹⁰ In addition, the Commission has held that a respondent’s failure to disclose the filing of a complaint against him alleging fraud deprived the respondent’s firm of material information. *See Toth*, 2008 SEC LEXIS 1520, at *31. We find that Zayed’s non-disclosure of the NJ litigation (which also alleged fraud) and the two judgments against him was material because each significantly altered the total mix of information available to his employer and the investing public.

As discussed below, we also find that Zayed willfully violated NASD Rule 2110 and IM-1000-1 by failing to file disclose material information on his Form U4.¹¹

¹⁰ *See Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009) (finding that respondent’s failure to disclose tax liens on his Form U4 was material because it would have alerted the employer to outside financial pressures faced by the employee). *See also Valerie E. King*, Complaint No. 2007010236401, 2009 FINRA Discip. LEXIS 11, at *7 (FINRA Hearing Panel Decision Apr. 27, 2009) (finding that respondent’s failure to disclose four judgments against her was material to the employer because it may have signaled she was experiencing financial difficulty).

¹¹ “In order to commit a willful violation, a respondent need only have intentionally committed the act that constitutes the violation.” *Dep’t of Mkt. Regulation v. Ko Sec., Inc.*, Complaint No. CMS000142, 2004 NASD Discip. LEXIS 21, at *8-9 (NASD NAC Dec. 20, 2004), *aff’d*, Exchange Act Rel. No. 52106, 2005 SEC LEXIS 1800 (July 22, 2005). An individual need not know that his conduct will violate a FINRA rule or securities regulation in order to support a finding of willfulness. *See Wonsover v. SEC*, 205 F.3d 408, 413 (D.C. Cir. 2000) (concluding that a finding that a violation is “willful” does not require a showing that the actor was aware that he was violating one of the securities laws). Here, Zayed intentionally committed the act that constitutes the NASD Rule 2110 and IM-1000-1 violations. Specifically, he intentionally failed to provide Skyebanc with information regarding both the civil complaint filed against him and the default judgments entered against him.

In light of our findings that Zayed’s failures to disclose the lawsuit and judgments were willful, we find that Zayed is statutorily disqualified. A person is deemed to be subject to a “statutory disqualification,” under Sections 3(a)(39) and 15(b)(4)(A) of the Securities Exchange Act of 1934, if, among other things, “such person . . . has willfully made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any statement which was at the time, and in 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 . . . any material fact which is required to be stated therein.”

A. Zayed Did Not Disclose the NJ Civil Litigation in His Answer to Question 14I(1)

Question 14I(1) of the Form U4 explicitly asked Zayed whether he had ever been named as a defendant in any pending investment-related civil litigation that alleged one or more sales practice violations.¹² It is undisputed that the civil complaint in the NJ civil litigation alleged that Zayed committed several sales practice violations, including breach of contract, fraud, misrepresentation, and conversion of his aunt's and uncle's funds. The weight of the evidence, including three sworn statements from Zayed, shows that Zayed received the complaint as early as August 2004 and no later than January 2006.¹³ Nevertheless, Zayed did not update his Form U4 to disclose that he had been named in the NJ civil litigation.

Zayed claims that in August 2004, he received a cover letter from the plaintiffs' attorney in the NJ civil litigation, but that the cover letter did not include a copy of the Notice of Lawsuit or the complaint. The Hearing Panel did not find Zayed's testimony to be credible on this issue, and we find nothing in the record that would prompt us to reverse the Hearing Panel's credibility determination. *See Dane S. Faber*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, at *17-18 (Feb. 10, 2004). Zayed's own declarations from filings with the New Jersey District Court indicate that he was aware of the NJ civil litigation as early as May 2005, yet failed to report the litigation on his Form U4 until October 2006.

Zayed also argues that he did not have to disclose the NJ civil litigation on his Form U4 because he believed that the allegations in the complaint were "fabrications" that would ultimately be dismissed. We reject such a restrictive view of the Form U4's disclosure requirements. *Cf. Am. First Assoc. Corp.*, Complaint No. E1020040926-01, 2008 FINRA Discip. LEXIS 27, at *15-16 (FINRA NAC Aug. 15, 2008) (rejecting respondents' argument that

¹² The Form U4 defines "investment-related" as pertaining to "securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer . . . or savings association)." The complaint in the NJ civil litigation establishes that the litigation was investment-related. Specifically, the complaint alleged that: (1) Zayed agreed to invest plaintiffs' money in the stock market, but that he did not invest the money as promised; and (2) Zayed falsely represented to the plaintiffs that their investments would be "100% risk free."

¹³ Zayed points to an unsigned February 25, 2005 letter prepared by a legal service obtained by Zayed and sent to the plaintiffs' attorney in the NJ civil litigation as evidence that Zayed was unaware that the complaint had been filed. This letter asked the plaintiffs' attorney to "contact Mr. Zayed directly and advise [him] as to the status of [the plaintiffs'] claims." We give this letter little weight in light of the fact that it is unsigned and that it is contradicted by multiple sworn statements from Zayed that indicate he was already aware that the complaint had been filed. Nevertheless, even if we were to consider this letter to be reliable, it is still clear from the record that Zayed was aware no later than January 2006 that the complaint had been filed, approximately nine months before Zayed amended his Form U4 to disclose the NJ civil litigation.

they did not have to disclose investment-related litigation on the Form U4 because they did not believe the court presiding over the litigation would rule in the plaintiffs' favor), *appeal filed sub nom, Ricupero v. FINRA*, S.E.C. Admin. Proc. No. 3-13727 (Dec. 18, 2009).

Finally, Zayed argues that he did not have to disclose the NJ civil litigation because it was not a "consumer-initiated" item that must be disclosed under Question 14I(1). Zayed bases this argument on the claim that the plaintiffs were not his "customers" and therefore not "consumers" within the meaning of Question 14I(1). Zayed concludes that the plaintiffs were not "consumers" because: (1) they did not have an account with Zayed through Skyebanc or any FINRA member firm; (2) Skyebanc did not supervise the trading of the account at issue; (3) there was no written agreement or contract between Zayed and the plaintiffs; and (4) Zayed did not "sell" any securities to the plaintiffs. Zayed's conclusion that the plaintiffs were not consumers has no merit.¹⁴

FINRA has offered guidance regarding Question 14I's definition of a "consumer." This guidance states that a consumer includes "a current, former or prospective *customer*."¹⁵ Cases interpreting the term "customer" in the securities context have viewed the term broadly to encompass individuals or entities that have some brokerage or investment relationship with the broker-dealer.¹⁶ Specifically, courts have rejected the argument that an account is necessary to establish an investor's status as a customer. *See Oppenheimer & Co. v. Neidhardt*, 56 F.3d 352, 358 (2d Cir. 1995) (holding that investors who had been defrauded by a representative of a FINRA firm were customers of that firm, despite the fact that they never opened accounts with the firm); *see also WMA Sec. Inc. v. Ruppert*, 80 F. Supp. 2d 786, 789 (S.D. Ohio 1999) (finding that the fact that investors never opened accounts with a broker-dealer was irrelevant because the investors conducted business with the broker-dealer's registered representative).

¹⁴ Zayed also contends that FINRA does not have jurisdiction to regulate "family" disputes and its attempt to do so is a violation of Zayed's constitutional rights. We reject the notion that FINRA's jurisdiction is limited in this manner. Zayed neither cites authority for this proposition nor identifies what specific constitutional rights have been allegedly violated. Moreover, it is well-settled that the constitutional limitations to which Zayed alludes do not apply to private entities like FINRA. *See E. Magnus Oppenheim & Co.*, Exchange Act Rel. No. 51479, 2005 SEC LEXIS 764, at *10 n.15 (Apr. 6, 2005) (noting that multiple courts and the Commission have held that constitutional protections are inapplicable to FINRA proceedings) (citations omitted).

¹⁵ Form U4 and U5 Interpretive Questions, *available at* <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdoces/p119944.pdf> (emphasis added).

¹⁶ *See Fleet Boston Robertson Stephens, Inc. v. Innovex, Inc.*, 264 F.3d 770, 772 (8th Cir. 2001) (discussing how courts have taken a broad view of the term "customer" in cases where "there existed some brokerage or investment relationship between the parties"); *see also John Hancock Life Ins. Co. v. Wilson*, 254 F.3d 48, 59 (2d Cir. 2001) (stating that "the NASD Code defines 'customer' broadly").

We also find that direct broker-dealer supervision of an account is not required in order to make an investor a customer of the broker-dealer for the purposes of Form U4 disclosures. *Cf. First Montauk Sec. Corp. v. Four Mile Ranch Dev. Co.*, 65 F. Supp. 2d 1371, 1380-81 (S.D. Fla. 1999) (finding an investor was a customer of an NASD firm, when his account was maintained at a different brokerage firm, but a representative of the member firm managed the investor's account). Here, Zayed was a registered representative of Skyebanc who managed funds deposited by the plaintiffs into Zayed's wife's account at another firm. We find that this was enough to create the investment relationship necessary to make the plaintiffs "customers"—and therefore "consumers"—under the broad disclosure requirements of Form U4.¹⁷

B. Zayed Did Not Disclose the NJ Civil Litigation Judgment in His Answer to Question 14M

Question 14M on the Form U4 asked Zayed whether he had any unsatisfied judgments or liens against him. It is undisputed that Zayed submitted three Form U4s between October 10, 2005, and October 11, 2006, on which he answered "no" to Question 14M. Thus, Zayed failed to disclose the \$286,155.53 judgment entered against him as a result of the NJ civil litigation. It is also undisputed that this judgment was entered against Zayed in April 2005. Although Zayed claims he did not know about the default judgment until his conversation with Galterio in November 2005, the record shows that as early as May of 2005, Zayed was actively litigating to vacate this judgment.¹⁸ Indeed, Zayed signed two certifications in May 2005 as part of his effort to vacate the judgment, as well as two sworn affidavits in January 2006. Under these facts, we find that Zayed was required to disclose the April 11, 2005 judgment on his Form U4. The plain language of the Form U4 calls for disclosure of these items, and Zayed's willful failure to do so violated NASD Rule 2110 and IM-1000-1.¹⁹

¹⁷ See also *Am. First Assoc. Corp.*, 2008 FINRA Discip. LEXIS 27, at *24 (finding that a firm's relationship with investors through their direct dealings with the firm's registered representative created a customer relationship for the purposes of FINRA rules).

¹⁸ The Hearing Panel specifically found that Zayed's testimony that he was unaware of the judgment in November 2005 was not credible, and we find nothing in the record that would prompt us to reverse the Hearing Panel's credibility determination. See *Faber*, 2004 SEC LEXIS 277, at *17-18. To the contrary, Zayed's sworn statements before the New Jersey District Court support the Hearing Panel's determination. Even without this credibility determination, we note that it is ultimately Zayed's responsibility to ensure that his Form U4 is accurate and that a lack of knowledge of reportable information does not excuse him of this responsibility. See *Jason A. Craig*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at *14 (Dec. 22, 2008) (finding that respondent's claim that he was unaware of a larceny conviction against him did not excuse him from his duty to ensure that his Form U4 was complete and accurate).

¹⁹ Zayed argues that he mistakenly believed that only bankruptcies and felonies had to be reported on a Form U4. Zayed's mistake, however, does not excuse his violation because a

C. Zayed Did Not Disclose the Attorney Fees Litigation in His Answer to Question 14M

Zayed was also required to disclose a second judgment against him on his Form U4, but failed to do so. It is undisputed that an Illinois court had entered a judgment of \$18,063.97 against Zayed as a result of the attorney fees litigation. As with his failure to disclose the judgment in the NJ civil litigation, on three occasions when Zayed filed amendments to his Form U4 between October 2005 and October 2006, Zayed did not disclose the \$18,063.97 judgment in his response to Question 14M. Zayed claims that the plaintiffs in the attorney fees litigation never properly served him and claims that there is “no proof” in the record that he was served. Zayed, however, executed an affidavit stating that on “August 27, 2004, [he] became aware of the present lawsuit, as [his] children, then aged 9 and 10, discovered a Summons and Complaint on a porch at [his] residence the prior night.” The affidavit further stated that “[i]n or about July 2005, while checking [his] credit, [Zayed] discovered that a judgment had been entered against [him].” Under these facts, we find that Zayed was aware of the judgment in the attorney fees litigation more than two years before he disclosed the judgment on his Form U4 and that his willful failure to disclose this judgment violated NASD Rule 2110 and IM-1000-1.

V. Sanctions

The FINRA Sanction Guidelines (“Guidelines”)²⁰ for filing an inaccurate Form U4 provide for fines ranging from \$2,500 to \$50,000 and a suspension in any or all capacities for five to 30 business days.²¹ In egregious cases, the Guidelines recommend consideration of a longer suspension (of up to two years) or a bar.²² The Guidelines also provide that in determining the appropriate sanction, adjudicators consider: (1) whether the information at issue was significant; (2) the nature of that information; and (3) whether the respondent’s failure to disclose information resulted in a statutorily disqualified individual associating with a firm.²³

Here, the information that Zayed did not disclose on his Form U4 was significant. Zayed failed to disclose a lawsuit alleging numerous sales practice violations, including fraud. In

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registered representative is presumed to know and abide by FINRA rules. *See Carter v. SEC*, 726 F.2d 472, 474 (9th Cir. 1983).

²⁰ *FINRA Sanction Guidelines* (2007), <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf> [hereinafter “*Guidelines*”].

²¹ *Id.* at 73.

²² *Id.* at 74.

²³ *Id.* at 73.

addition, Zayed did not disclose the judgments entered against him totaling more than \$300,000, one of which subjected him to a garnishment order. There is, however, no evidence that Zayed's failure to disclose the NJ civil litigation and default judgments against him caused a statutorily disqualified individual to associate with Skyebanc. Nevertheless, we find that Zayed's misconduct is egregious and that several other aggravating factors suggest that the sanctions imposed should reflect the higher end of the Guidelines' recommendations.

First, we find it aggravating that Zayed blames his failures to disclosure on other parties' purported failures to serve him properly, despite several contradictory statements from Zayed himself indicating that he was served properly.²⁴ Second, there is evidence that Zayed's misconduct was intentional.²⁵ Again, it is clear from Zayed's sworn statements that he was aware of the default judgments against him, but he made no effort to disclose them, even while vigorously litigating to vacate these judgments. Finally, we find it aggravating that Zayed's failures to disclose occurred over an extended period of more than a year for each violation.²⁶ Accordingly, we suspend Zayed for nine months and fine him \$10,000 for all three violations.²⁷

²⁴ *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 2).

²⁵ *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).


²⁶ *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 9).

²⁷ We have previously established that "where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve [FINRA's] remedial goals." *Dep't of Enforcement v. Fox & Co. Invs., Inc.*, Complaint No. C3A030017, 2005 NASD Discip. LEXIS 5, at *37 (NASD NAC Feb. 24, 2005) (citing *Inv. Mgmt. Corp.*, Complaint No. C3A010045, 2003 NASD Discip. LEXIS 47, at *27-28), *aff'd*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822 (Oct. 28, 2005). Here, we find that Zayed's violations arose from his disregard of the Form U4's reporting requirements.

VI. Conclusion

We find that Zayed violated NASD Rule 2110 and IM-1000-1 by willfully failing to make required disclosures on his Forms U4.²⁸ Accordingly, we suspend Zayed for nine months and fine him \$10,000. In addition, we affirm the Hearing Panel's assessment of hearing costs of \$1,034.20, and we assess appeal costs of \$1,705.25.²⁹

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith, Senior Vice President and
Corporate Secretary

²⁸ We have also considered and reject without discussion all other arguments advanced by the parties.

²⁹ Pursuant to NASD Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.