

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v..

JAMES PAQUETTE
(CRD No. 2164109),

Respondent.

Disciplinary Proceeding
No. 2017054889201

Hearing Officer–RES

DEFAULT DECISION

August 1, 2019

For failure to timely update his Uniform Application for Securities Industry Registration to disclose a felony charge, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

For Complainant: J. Loyd Gattis, Esq. and Mark A. Koerner, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement has filed a Complaint against Respondent James Paquette, a former registered representative of a FINRA member firm. The first cause of action of the Complaint alleges that in May 2016, Respondent failed to update his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose a felony charge. This failure to disclose was allegedly in willful violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. The second cause of action is pled in the alternative to the first cause of action, and is the same except it does not contain the allegation of willfulness.

Enforcement served the Complaint on Paquette in accordance with FINRA Rules. Respondent did not file an Answer. Enforcement filed a motion for entry of default decision (“Default Motion”) on June 7, 2019, together with the declaration of counsel J. Loyd Gattis and 14 supporting exhibits. Respondent did not file an opposition. For the reasons stated below, I

find Paquette in default, treat the allegations in the Complaint as admitted, find that Respondent's violations were willful, grant the Default Motion, and issue this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Paquette's Background

James Paquette entered the securities industry in October 1991 as a General Securities Representative.¹ Respondent was associated with Investacorp, Inc. ("Investacorp"), a member of FINRA, from March 2012 to July 2017.² Respondent associated with other FINRA members from August 2017 to January 2019.³ He is not presently registered with FINRA.

B. FINRA's Jurisdiction

FINRA retains jurisdiction over Paquette under Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years following the effective date of termination of Respondent's registration,⁴ and the Complaint charges him with misconduct committed while he was associated with FINRA member Investacorp.⁵

C. Origin of the Investigation

The investigation originated from an amendment to Paquette's Form U4 that Investacorp filed in June 2017, disclosing that the State of South Carolina had charged Respondent with a felony.⁶

D. Paquette's Default

Enforcement served Paquette with the First and Second Notices of Complaint and the Complaint by first-class and certified mail on Respondent's address at a Correctional Institution in South Carolina, and on his last known residential address reflected in FINRA's Central Registration Depository ("CRD"), in accordance with FINRA Rule 9134(a)(2) and (b)(1).⁷ Respondent did not file an Answer by March 25, 2019 as required by FINRA Rule 9215, or otherwise respond to the Complaint.⁸

¹ Declaration of J. Loyd Gattis ("Decl.") ¶ 4. Paquette was subsequently registered as a General Securities Principal and an Investment Company and Variable Contracts Products Representative. *Id.*

² Decl. ¶ 4.

³ Decl. ¶ 4.

⁴ Decl. ¶ 4; FINRA By-Laws, Art. V, Sec. 4(a).

⁵ Complaint ("Compl.") ¶¶ 6-12, 20; Decl. ¶ 4; FINRA By-Laws, Art. V, Sec. 4(a).

⁶ Compl. ¶ 12; Decl. ¶ 2.

⁷ Decl. ¶¶ 7, 11.

⁸ Decl. ¶¶ 9, 15.

On March 27, 2019, the predecessor Hearing Officer in this proceeding issued an order directing Paquette to show cause, on or before April 26, why he should not be held in default for failure to answer the Complaint.⁹ This order to show cause was sent to Respondent's CRD address and his address at the Correctional Institution in South Carolina. Paquette did not respond to the order to show cause.

On April 30, 2019, the Hearing Officer issued a second order directing Paquette to show cause, on or before May 24, why he should not be held in default for failure to answer the Complaint.¹⁰ This second order to show cause was sent to Respondent's CRD address and his new address at a different Correctional Institution in South Carolina. The Office of Hearing Officers received an affidavit of service on May 13 from the South Carolina Department of Corrections stating that the second order to show cause was delivered to Respondent.¹¹ Respondent took no action in response to the second order to show cause.

Based on these circumstances, I find that Paquette defaulted.

FINRA Rule 9269 authorizes the hearing officer to issue a default decision against a respondent who does not file an Answer to the Complaint within the time afforded by FINRA Rule 9215.¹² Paquette had the opportunity to file an Answer but did not. Respondent was warned of the possible consequences of not answering the Complaint.¹³ I find a default decision against Respondent to be warranted.¹⁴ Upon a default, FINRA Rules 9215(f) and 9269 authorize the hearing officer to treat the allegations of the Complaint as admitted by the respondent.

E. Paquette Fails to Disclose a Felony Charge on His Form U4, in Violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010

Article V, Section 2(c) of FINRA's By-Laws provides that "[e]very application for registration filed with [FINRA] shall be kept current at all times by supplementary amendments ... filed with [FINRA] not later than 30 days after learning of the facts or circumstances giving rise to the amendments." For an associated person, the prescribed application for registration is the Form U4. FINRA Rule 1122 provides:

No 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

⁹ Order to Show Cause Why Respondent Should Not Be Held in Default (Mar. 27, 2019).

¹⁰ Second Order to Show Cause Why Respondent Should Not Be Held in Default (Apr. 30, 2019).

¹¹ See Decl. ¶ 17.

¹² FINRA Rule 9269(a).

¹³ Decl. ¶ 11.

¹⁴ Paquette is hereby notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.

FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”¹⁵

An associated person submitting a Form U4 has the obligation to ensure that the information included in the Form U4 is truthful and accurate,¹⁶ and must keep it current at all times.¹⁷ The duty to amend timely the Form U4 assures regulatory organizations, employers, and members of the public that they have all material and current information about the associated person with whom they are dealing.¹⁸ Amendments to the Form U4 must be made within 30 days after the associated person learns of the facts or circumstances giving rise to the amendment.¹⁹

The State of South Carolina charged Paquette with a felony offense.²⁰ Respondent was arraigned on May 6, 2016.²¹ From that date forward, Respondent clearly knew of the felony charge.

At the time of Paquette’s felony charge, Question 14A(1) of the Form U4 asked: “Have you ever ... been charged with any felony?”²² Respondent did not amend his answer to this question to disclose his felony charge. Respondent did not disclose the felony charge to his employer firm, Investacorp, to enable the firm to amend his Form U4.²³ Respondent’s failure to amend and disclose continued for more than a year.²⁴

Investacorp learned of the felony charge in June 2017, when an insurance company informed the firm that it had refused to renew Paquette’s appointment as an insurance agent because of the felony charge.²⁵ Investacorp investigated the basis for the insurance company’s

¹⁵ *Dep’t of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *29 (NAC July 24, 2017), *appeal dismissed*, Exchange Act Release No. 82970, 2018 SEC LEXIS 823 (Mar. 30, 2018).

¹⁶ *Dep’t of Enforcement v. Wyche*, No. 2015046759201, 2019 FINRA Discip. LEXIS 2, at *8 (NAC Jan. 8, 2019).

¹⁷ *Dep’t of Enforcement v. Ortiz*, No. 2014041319201, 2017 FINRA Discip. LEXIS 5, at *28 (NAC Jan. 4, 2017).

¹⁸ *Dep’t of Enforcement v. Riemer*, No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at *8-9 (NAC Oct. 5, 2017), *aff’d*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022 (Oct. 31, 2018).

¹⁹ *Ortiz*, 2017 FINRA Discip. LEXIS 5, at *28.

²⁰ Compl. ¶ 6.

²¹ Compl. ¶ 7.

²² Compl. ¶ 9.

²³ Compl. ¶ 10.

²⁴ Compl. ¶ 10.

²⁵ Compl. ¶ 11.

decision and determined that an amendment to Respondent's Form U4 was necessary.²⁶ On June 21, Investacorp amended Respondent's Form U4 to disclose the felony charge.²⁷

Paquette's failure to disclose the felony charge violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122. A violation of FINRA Rule 1122 is also a violation of FINRA Rule 2010.²⁸

A person who willfully omits any material fact required to be stated in an application or report to FINRA is subject to statutory disqualification.²⁹ A willful violation simply means that the person charged with a duty knows what he is doing.³⁰ In the context of a Form U4, a fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would view the fact as significantly altering the total mix of information made available.³¹ Because of the importance the securities industry places on full and accurate disclosure, it is presumed that all the information reportable in the Form U4 is material.³²

Paquette knew what he was doing: he was aware of the felony charge but voluntarily chose not to disclose it. When Investacorp found out about it, Respondent admitted to the firm that he was facing a criminal charge, but did not give further details, such as the fact that the charge was a felony.³³ The undisclosed information was material. It formed the basis for Investacorp's decision to terminate Respondent's employment. A customer would view a felony charge as significantly altering the total mix of information available about Respondent. Accordingly, Paquette's violations of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122 were willful and subject him to statutory disqualification.

²⁶ Compl. ¶ 11. Within a month, Paquette was no longer employed by Investacorp. Compl. ¶ 4.

²⁷ Compl. ¶ 12. In January 2019, Paquette was convicted as charged and sentenced to a prison term of 10 years. Compl. ¶ 13.

²⁸ See *Dep't of Enforcement v. Saliba*, No. 2013037522501, 2019 FINRA Discip. LEXIS 1, at *38 (NAC Jan. 8, 2019) ("the violation of another FINRA rule is a violation of FINRA Rule 2010"), *appeal docketed*, Nos. 3-18989, 3-18990, 2019 SEC LEXIS 529 (Mar. 18, 2019); *Wyche*, 2019 FINRA Discip. LEXIS 2, at *15-16 (by failing to report a Form U4 reportable event "within 30 days of learning of it, Wyche violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010").

²⁹ Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78c(a)(39); Section 15(b)(4)(A) of the Exchange Act, 15 U.S.C. § 78o(b)(4)(A); FINRA By-Laws Art. III, § 4; *Michael McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *14 (Mar. 15, 2016). A Form U4 is a required application to FINRA within the meaning of Sections 3(a)(39) and 15(b)(4)(A) of the Exchange Act.

³⁰ *Dep't of Enforcement v. Dakota Sec. Int'l, Inc.*, No. 2016047565702, 2019 FINRA Discip. LEXIS 11, at *32 (NAC Mar. 18, 2019), *appeal docketed*, No. 3-19138, 2019 SEC LEXIS 1074 (May 9, 2019).

³¹ *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *30 (NAC Mar. 16, 2017), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017).

³² *Dep't of Enforcement v. Holeman*, No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at *19 (NAC May 21, 2018).

³³ Compl. ¶ 11.

Because Paquette failed to update his Form U4 to disclose a felony charge, in willful violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010, I find him liable on the first cause of action of the Complaint. I dismiss the second cause of action.

III. Sanctions

According to FINRA's Sanction Guidelines ("Guidelines"), the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.³⁴ The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

The Sanction Guideline for an individual's failure to file a Form U4 amendment recommends a fine of \$2,500 to \$39,000.³⁵ Where aggravating factors predominate, the adjudicator should consider a higher fine.³⁶ With regard to a suspension, where aggravating factors are present the adjudicator should consider suspending the respondent for a period of 10 business days to six months.³⁷ Where aggravating factors predominate, the adjudicator should consider a longer suspension (of up to two years) or, where the respondent intended to conceal information or mislead, a bar.³⁸

The considerations specific to this Guideline include the following:

- The nature and significance of the information at issue.
- The number of the disclosable events at issue.
- Whether the omission of information was done in an intentional effort to conceal information or in an attempt to mislead.
- The duration of the delinquency.
- Whether the failure to disclose delayed any regulatory investigation.
- Whether the failure resulted in a statutorily disqualified individual remaining associated with a firm.

³⁴ FINRA Sanction Guidelines ("Guidelines") at 2 (Mar. 2019) (General Principle No. 1).

³⁵ Guidelines at 71.

³⁶ Guidelines at 71.

³⁷ Guidelines at 71.

³⁸ Guidelines at 71.

- Whether the respondent’s misconduct resulted directly or indirectly in injury to other parties and, if so, the nature and extent of the injury.³⁹

I find that aggravating factors predominate in this case. Paquette intended to conceal information and mislead concerning his felony charge. Respondent did not want his employer firm or his customers to know of his felony charge, so he simply continued with his job as though nothing occurred. Respondent thus misled his firm and his customers. Even when Investacorp asked Respondent about the charge, he did not disclose it was a felony.

Paquette’s failure to amend his Form U4 continued for more than a year and, most likely, would have continued indefinitely if Investacorp were not informed of the charge by a third party.⁴⁰ The nature of the withheld information was highly significant: Respondent had been charged with a felony offense.⁴¹ Such an offense would severely diminish, if not destroy, a registered representative’s employability in the securities industry—and customers’ willingness to do business with him and trust him with their investment funds.

Investacorp faced the risk of reputational injury if and when it became publicly known that the firm had in its employment, for more than a year, a person charged with a felony.⁴² By not disclosing the felony charge, Paquette delayed FINRA’s investigation into his felony for the same year-long period.⁴³ Respondent continued to receive compensation when his employment would have been terminated.⁴⁴

There are no mitigating factors. Although Investacorp terminated Paquette’s employment, I do not find such termination to be mitigating because Respondent has not shown the termination has materially reduced the likelihood of misconduct in the future.⁴⁵

In conclusion, Paquette intended to conceal information and mislead by not updating his Form U4 to disclose the felony charge. Aggravating factors predominate, and no mitigating factors are present. I find Respondent unfit to participate in an industry that depends on the

³⁹ Guidelines at 71.

⁴⁰ Guidelines at 7 (Principal Consideration No. 9: Whether the respondent engaged in the misconduct over an extended period of time), 71 (the duration of the delinquency).

⁴¹ Guidelines at 71.

⁴² Guidelines at 7 (Principal Consideration No. 11: With respect to other parties, including the investing public, (a) whether the respondent’s misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury), 71 (same).

⁴³ Guidelines at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA’s investigation or conceal information from FINRA), 71 (whether the failure to disclose delayed any regulatory investigation).


⁴⁴ Guidelines at 8 (Principal Consideration No. 16: Whether the respondent’s misconduct resulted in the potential for the respondent’s monetary or other gain).

⁴⁵ Guidelines at 5 (General Principle No. 7).

honesty and integrity of its members. I bar Paquette from associating with any FINRA member in any capacity.⁴⁶

IV. Order

With regard to the first cause of action of the Complaint, Respondent James Paquette failed to amend his Form U4 to disclose a felony charge, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. For violation of this section of the FINRA By-Laws and these Rules, Paquette is barred from associating with any FINRA member in any capacity. Paquette is subject to statutory disqualification because his violations of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122 were willful and the omitted information was material. The second cause of action is dismissed. The bar shall be effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Richard E. Simpson
Hearing Officer

Copies to:

James Paquette (via first-class mail and overnight courier)
J. Loyd Gattis, Esq. (via email and first-class mail)
Mark A. Koerner, Esq. (via email)
Lara Thyagarajan, Esq. (via email)

⁴⁶ Because Paquette is barred, I do not impose a fine. Guidelines at 10 (“Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.”).