FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. MICHAEL PATRICK MURPHY (CRD No. 2596905), Respondent.	Disciplinary Proceeding No. 2017053843901 Hearing Officer–RES **HEARING PANEL DECISION** May 27, 2020

Respondent Michael Patrick Murphy is fined $20,000 and suspended from associating with any FINRA member in any capacity for six months. Respondent willfully failed to timely amend his Form U4 to disclose three federal income tax liens and four State of New York income tax warrants, totaling more than $6 million, in violation of FINRA By-Laws and Rules. When Respondent amended his Form U4, he willfully provided inaccurate information, which also violated FINRA By-Laws and Rules.

Appearances

For the Complainant: Reema Abdelhamid, Esq., John R. Baraniak, Jr., Esq., Jessica Brach, Esq., Kay Lackey, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent, Michael Patrick Murphy: Howard R. Elisofon, Esq., Stephen M. Medow, Esq., Charles M. O'Rourke, Esq.

DECISION

I. Introduction

FINRA's Department of Enforcement filed a Complaint against Respondent Michael Patrick Murphy, a registered representative and principal of a FINRA member firm. In a single cause of action, the Complaint alleges that from February 2014 through May 2018, Murphy failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose three federal income tax liens filed by the Internal Revenue Service ("IRS Liens") and four tax warrants filed by the New York State Department of Taxation and Finance

("New York Warrants"), totaling more than $6 million (collectively, "Liens").[1] The Complaint also alleges that Murphy provided inaccurate information when he updated his Form U4 to disclose six of the seven Liens.[2] The alleged failures to update and the inaccurate update constituted an allegedly willful violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.[3]

Murphy denied the charges, and a hearing was held before a FINRA Hearing Panel. At the hearing, Murphy contended, among other things, that he was not subject to any tax liens and that his failure to disclose any such liens did not violate FINRA By-Laws or Rules.

After carefully considering the hearing testimony, the hearing exhibits, and the parties' pre-hearing and post-hearing briefs, the Hearing Panel finds, as explained below, that Enforcement established Murphy's willful violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010, by failing to timely amend his Form U4 to disclose the Liens and later providing inaccurate information when he amended his Form U4. Based on this finding, the Hearing Panel fines Murphy $20,000 and suspends him from associating with any FINRA member in any capacity for six months.

II. Findings of Fact

A. Respondent

Murphy has been associated with FINRA member Columbus Advisory Group, Ltd. ("Columbus") since 2003.[4] He is Columbus's founder, owner, president, and chief executive officer ("CEO").[5] He is registered with FINRA as a General Securities Representative, General Securities Principal, Investment Banking Representative, and Investment Banking Principal.[6] He has been registered with FINRA since 1995.[7]

Columbus's office is in New York.[8] As of September 2018, Columbus had six registered representatives and 30 customers.[9]

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[1] Complaint ("Compl.") ¶ 1.

[2] Compl. ¶ 2.

[3] Compl. ¶ 3.

[4] Hearing Transcript ("Tr.") 89.

[5] Tr. 87, 89, 396, 416–18, 677; Complainant's Exhibit ("CX-") 56, at 6.

[6] Tr. 90, 400-01; CX-56, at 6.

[7] CX-56, at 13.

[8] CX-56, at 1.

[9] Tr. 421-22.

Besides his work at Columbus, Murphy is the founder of Rosecliff Capital Advisors LLC, a wholly owned subsidiary of Columbus, and he serves as Rosecliff Capital's CEO.[10] Murphy also was the founder, managing partner, and CEO of Rosecliff Ventures, an investment firm focused on venture capital and private equity opportunities, with more than 70 portfolio companies and $575 million in assets under management.[11]

B. Origin of the Investigation

The investigation leading to this disciplinary proceeding began when FINRA's Registration and Disclosure Department ("RAD") found through searches of public records two tax liens under the name of "Michael Murphy."[12] RAD directed Murphy to disclose these tax liens on his Form U4, but he failed to do so. RAD therefore transferred the matter to the Department of Member Supervision for a cause examination.[13] The presenter of one lien, for $4,164,953, was the IRS; the other lien, for $334,716, was signed by a Deputy Tax Commissioner for the State of New York.[14] FINRA subsequently found additional tax liens and warrants identifying Murphy as the delinquent taxpayer, as described below.

C. Murphy Falls Behind in Paying Taxes

Beginning with the sharp decline of the stock market in 2008, Murphy fell behind in paying income taxes that he owed, and he could not earn enough money to pay his arrears.[15] A large portion of Murphy's personal wealth was concentrated in real estate investments, and the value of those investments deteriorated rapidly in tandem with real estate market values.[16] He knew he owed millions of dollars to the IRS and hundreds of thousands of dollars to New York.[17]

In 2010, Murphy learned that the IRS could place a lien on his assets.[18] That same year, he gave his Certified Public Accountant ("CPA") a power-of-attorney to represent him with the IRS.[19]

On July 10, 2017, the IRS sent Murphy six annual reminders of balances due as follows:

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[10] CX-63, at 2.

[11] CX-64, at 2, 4; Tr. 143-44, 400, 404, 411-13.

[12] Tr. 83.

[13] Tr. 344-45.

[14] Tr. 85. All monetary amounts in this Hearing Panel Decision are rounded to the nearest dollar.

[15] Tr. 441-42, 653.

[16] Tr. 654.

[17] Tr. 443, 1001.

[18] Tr. 445-46.

[19] Tr. 668-69.

Tax Year	Balance Due
2007	$3,009,947
2008	$297,523
2011	$192,290
2012	$124,074
2013	$38,157
2014	$561,401[20]

In the hearing, Murphy testified that the amount of taxes he and his spouse owed "kept getting larger and larger and then if we didn't pay the money . . . the IRS could file a tax lien against us."[21]

D. The IRS Liens and the New York Warrants

The Liens at issue, the IRS Liens and the New York Warrants, are as follows:

Tax Authority	Date Filed	Tax Year(s)	Exhibit No.	Amount
IRS	Jan. 30, 2014	2007	CX-2	$4,164,953
IRS	June 13, 2016	2008	CX-5	$271,361
IRS	June 13, 2016	2011–14	CX-4	$786,727
New York	Feb. 18, 2015	2011	CX-3	$334,716
New York	May 11, 2017	2014	CX-6	$213,654
New York	June 22, 2017	2015	CX-7	$198,476
New York	Dec. 28, 2017	2016	CX-8	$61,500
Total				**$6,031,387**[22]

The first IRS Lien, for $4,164,953, was recorded or filed in the Office of the City Register of New York on January 30, 2014.[23] The second page of the Lien is titled "Notice of Federal Tax Lien."[24] The name of the debtor is "Michael Murphy."[25] The other two IRS Liens contain similar information, with filing dates corresponding to those in the table above.[26] Computer records show that liens recorded in the database of the Office of the City Register of

[20] CX-10, at 1; CX-11, at 1; CX-12, at 1; CX-13, at 1; CX-14, at 1; CX-15, at 1. The reminders were titled "Annual reminder of balance due taxes for tax year xxxx."

[21] Tr. 447. Murphy filed joint tax returns with his spouse. The record indicates that the IRS assessed Murphy penalties for filing his tax returns after the due dates. Respondent's Exhibit ("RX-__") 9, at 2, 5.

[22] CX-2, at 2; CX-3; CX-4, at 3; CX-5, at 2; CX-6; CX-7; CX-8.

[23] CX-2, at 1.

[24] CX-2, at 2.

[25] CX-2, at 1.

[26] CX-4; CX-5.

New York as being filed correspond to the City Register file numbers and filing dates on the IRS Lien documents.[27]

In the first New York Warrant, for $334,716, the New York State Department of Taxation and Finance commands the Deputy Tax Commissioner to file the Warrant in the judgment docket:

> Now therefore, we command you to file a copy of this warrant within five days after its receipt by you in the office of the clerk of [New York County], for entry by him in the judgment docket, pursuant to the provisions of the Tax Law.[28]

A stamp on the Warrant reflects the following: "Filed/County Clerk/N.Y. County/2015 Feb 18/AM 10:00."[29] The caption of the Warrant is: "Commissioner of Taxation and Finance against Michael Murphy."[30] The Warrant also includes the name of Murphy's spouse.[31] The other three New York Warrants have similar information, with filing dates corresponding to the table above.[32] A computer printout from the New York Tax Warrant System shows records that all four New York Warrants were filed.[33]

E. RAD's Disclosure Letters

Murphy did not take RAD's many disclosure letters seriously. These letters gave him notice of the Liens and directed him to amend his Form U4 to disclose them. Murphy's firm, Columbus, took two months to respond to one of RAD's disclosure letters. It took Columbus four months to respond to another disclosure letter. And Columbus did not even open a third disclosure letter for two months, and there is no evidence that Columbus responded to it. Murphy was the CEO and president of Columbus when the firm delayed responding and failed to respond to one or more of RAD's disclosure letters.

1. RAD's May 2015 Disclosure Letter

On May 17, 2015, RAD sent Columbus a disclosure letter about the $4,164,953 IRS Lien (filed on January 30, 2014).[34] The disclosure letter informed Columbus that the Lien had been filed:

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[27] CX-2, at 1; CX-4, at 1; CX-5, at 1; CX-35, at 13.

[28] CX-3.

[29] CX-3.

[30] CX-3.

[31] CX-3, at 1; CX-6, at 1; CX-7, at 1; CX-8, at 1.

[32] CX-6; CX-7; CX-8.

[33] CX-9.

[34] Tr. 90-91, 453; CX-17. RAD sent all disclosure letters to Columbus electronically over the Central Registration Depository ("CRD") system. Tr. 337, 927.

> The following event(s) in public records appear to have included a U4 reporting obligation, the event(s) not reported in WebCRD: unspecified date lien for $4,164,952.59 to unspecified creditor filed in New York, NY, docket/case# 2014000038200 . . . If this matter did not involve the individual listed above, or if the matter was not reportable at any time during the individual's registration (for instance, if payment of the event(s) was made in accordance with applicable contractual and/or statutory provisions such that it was never considered unsatisfied and therefore did not meet the requirements for reporting), submit correspondence and any supporting documentation, in lieu of a DRP, with complete details, including reason for non-reportability. If you have any questions, please call 240-386-4193.[35]

An individual at Columbus with the user name "MMurphy1" viewed this letter on May 19, 2015.[36] In a response letter sent two months later, Columbus stated, "After extensive review of Mr. Murphy's credit report and discussion with our compliance staff, the firm is certain that this judgment is not against Mr. Murphy."[37] In its disclosure letter, RAD had directed Columbus to "submit correspondence and any supporting documentation . . . with complete details" showing that the IRS lien did not involve Murphy or that the lien was not reportable at any time during Murphy's registration.[38] Columbus's response did not include such correspondence or supporting documentation.[39]

2. RAD's July 2015 Disclosure Letter

On July 16, 2015, RAD sent Columbus a disclosure letter about the first New York Warrant for $334,716 (filed on February 18, 2015).[40] This disclosure letter informed Columbus that a lien had been filed in favor of New York:

> The following event(s) in public records appear to have involved a U4 reporting obligation, the event(s) not reported in WebCRD: 2/18/15 $334,715 lien to the State of New York, filed in New York, NY, number 003336548 . . . If this matter did not involve the individual listed above, or if the matter was not reportable at any time during the individual's registration (for instance, if payment of the event(s) was

[35] CX-17, at 1-2. The "individual listed above" was Murphy. "DRP" stands for "disclosure reporting page." Murphy admits that he did not call the telephone number listed in CX-17. Tr. 459-60; *accord* Tr. 935.

[36] Tr. 91; CX-17, at 1. Columbus authorized firm employees in the compliance department to use the "MMurphy1" user name. Tr. 435-36. The firm's chief compliance officer testified that the individuals who had such authorization were himself, the financial and operations principal (who was also Murphy's personal CPA), and Murphy. Tr. 973. Murphy admits that, regardless of who viewed the letter, he was made aware of any communication from FINRA concerning any of the Liens. Tr. 454.

[37] CX-18.

[38] CX-17, at 2.

[39] CX-18.

[40] Tr. 96; CX-19.

> made in accordance with applicable contractual and/or statutory provisions such that it was never considered unsatisfied and therefore did not meet the requirements for reporting), submit correspondence and any supporting documentation, in lieu of a DRP, with complete details, including reason for non-reportability. If you have any questions please call 240-386-4193.[41]

An individual at Columbus with the user name "MMurphy1" viewed this disclosure letter on July 21, 2015.[42] In Columbus's response to RAD four months later, the firm stated its belief that the New York Warrant may have been erroneously filed against Murphy because "Murphy" was a common name:

> [FINRA's disclosure] letter indicates that Mr. Murphy is required to update his Form U4 to reflect a lien to the state of New York (Number 003336548) in the amount of $334,715.00 filed on 2/18/2015. After extensive review of Mr. Murphy's credit report, discussions with our compliance staff and company accountant, the firm was unable to locate this judgment . . . In light of our reviews, the firm believes that this judgment may have been erroneously filed against Mr. Murphy due to the commonality of his name.[43]

In its disclosure letter, RAD had directed Columbus to "submit correspondence and any supporting documentation . . . with complete details."[44] Again, Columbus's response letter did not include such correspondence or supporting documentation.[45]

3. RAD's February 2016 Disclosure Letter

RAD sent a follow-up disclosure letter, dated February 8, 2016, about the $334,716 New York Warrant.[46] The subject line of this disclosure letter was "Correspondence received regarding the 02/18/2015 state tax lien identified in public records, which does not satisfy the request."[47] The disclosure letter informed Columbus that credit reports were not sufficient proof that a tax lien had not been filed:

> Credit checks are not sufficient to research the event. Additionally, further research in public records indicates a match to both the RR's name and residential address. Please submit disclosure of the state tax lien, or additional correspondence outlining the reason for non-reportability. NY tax warrants can be researched online here:

[41] CX-19, at 1-2.

[42] Tr. 95-96; CX-19, at 1.

[43] CX-20.

[44] CX-19, at 2.

[45] CX-20.

[46] CX-21.

[47] CX-21, at 1.

[http://www.docs.ny-gov/corps/tax_warrant_search.html]. If you have any questions, please call 240-386-4193.[48]

Nearly two months passed before an individual at Columbus viewed this disclosure letter from RAD,[49] and neither Murphy nor Columbus responded.[50] Murphy admits that he did not personally visit the website provided to Columbus by RAD,[51] and he did not call the telephone number in the disclosure letter to speak with RAD.[52]

4. RAD's 2017 Disclosure Letters

On January 4, 2017, RAD sent Columbus a disclosure letter informing the firm again of the $334,716 New York Warrant.[53] RAD sent Columbus an identical disclosure letter on January 10, 2017.[54] On the same day, RAD sent Columbus a disclosure letter informing the firm again of the $4,164,953 IRS Lien.[55] RAD sent another disclosure letter to Columbus again informing the firm of the $334,716 New York Warrant on July 19, 2017.[56] The record contains no document showing that Columbus or Murphy responded to these disclosure letters.

F. FINRA's Rule 8210 Requests and Murphy's Responses

1. FINRA's June 2017 FINRA Rule 8210 Request

In May or June 2017, RAD referred its matter to FINRA's Department of Member Supervision for a cause examination. On June 5, 2017, FINRA sent Murphy a letter and request under FINRA Rule 8210 stating, in part, "Staff has learned that the following five (5) judgments and/or liens have been filed against you and which do not appear to have been disclosed by you to CRD on your Form U-4."[57] The five judgments and liens are listed below:

Creditor	Date	Amount
IRS	June 13, 2016	$271,361
IRS	June 13, 2016	$786,727
New York	February 18, 2015	$334,716

[48] CX-21, at 1-2.

[49] Tr. 505; CX-21, at 1.

[50] Tr. 105-06.

[51] Tr. 486-87.

[52] Tr. 459-60.

[53] Tr. 106-07; CX-22, at 1-2. This disclosure letter was first viewed on January 5, 2017—the day after it was sent.

[54] Tr. 520-21; CX-23. This disclosure letter was first viewed on January 11, 2017—the day after it was sent.

[55] Tr. 522-23; CX-23a. This disclosure letter was first viewed on January 11, 2017—the day after it was sent.

[56] Tr. 524-25; CX-24, at 1-2. This disclosure was first viewed on July 20, 2017—the day after it was sent.

[57] CX-26, at 1.

Douglas Elliman, LLC	February 6, 2015	$738,687[58]
IRS	January 30, 2014	$4,164,953

The June 2017 FINRA Rule 8210 request directed Murphy to provide a summary of the circumstances that led to each of the five judgments and liens being filed, an explanation of how and when Murphy first became aware of each judgment and lien, and a statement whether each judgment and lien was satisfied.[59] The FINRA Rule 8210 request directed Murphy, if he denied that the judgment or lien pertained to him, to provide a detailed statement explaining the basis for his determination that the judgment or lien did not pertain to him or had been erroneously filed against him.[60] The request stated it was being made under FINRA Rule 8210.[61]

Murphy stated in his written response to the June 2017 FINRA Rule 8210 request that he was unaware of an IRS lien:

> I have been actively working with the IRS regarding taxes. We are working to settle the situation and have been in negotiation with the IRS. I am not aware of a judgment or lien being filed. I regularly review my credit report and there is no record of a judgment or lien being reported.[62]

In answer to FINRA's question whether any of the Liens had been satisfied, Murphy stated, "The above instances are all being negotiated or are in the process of being paid."[63] In answer to FINRA's request for a detailed statement explaining the basis for Murphy's determination that the Liens did not pertain to him or had been erroneously filed against him, Murphy stated that Columbus's compliance department had conducted a review of his credit report, Google searches, and prior tax filings in July 2015, September 2015, and December 2015.[64] He attached to his response an Experian credit report that did not show any liens or judgments filed against him.[65]

In Murphy's response to the June 2017 FINRA Rule 8210 request, he provided no evidence that he asked the relevant tax authorities whether they had filed any liens against him, and no evidence from the tax authorities to the effect that no liens had been filed against him.

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[58] The judgment in favor of Douglas Elliman was entered in the case of *Douglas Elliman, LLC v. Michael P. Murphy*, Index No. 152511/12, Supreme Court of the State of New York, County of New York. CX-1.

[59] CX-26, at 1; Tr. 529-30.

[60] CX-26, at 2.

[61] CX-26, at 3.

[62] CX-27, at 2. Murphy made a similar statement with regard to the $334,716 New York Warrant. CX-27, at 2.

[63] CX-27, at 3.

[64] CX-27, at 3-4.

[65] Tr. 703, 709; CX-27, at 9.

2. FINRA's July 2017 FINRA Rule 8210 Request

On July 14, 2017, FINRA sent Murphy a second FINRA Rule 8210 request.[66] FINRA stated it had credible information about judgments and liens against Murphy:

> The Staff has credible information indicating that the following five (5) judgments and/or liens have been filed against you, none of which have been disclosed by you to CRD on your Form U-4 . . . While you provided Staff with a response dated June 19, 2017, which attached a copy of an Experian credit report that does not reflect judgments/liens filed against you, please understand that FINRA does not rely on the accuracy of this credit report. Accordingly, it is the Staff's position that now that you have been notified of the above referenced judgments/liens, you are responsible for reporting them on Form U4, unless evidence is provided that the judgments/liens do not pertain to you. At a minimum, you should contact the relevant agency and or state/county court where the judgment/lien was rendered and obtain confirmation that the judgment/lien does or does not pertain to you.[67]

On August 1, 2017, Murphy sent a written response to this FINRA Rule 8210 request, in which he stated that Columbus would make updates to his Form U4 with regard to the Liens within 30 days:

> The firm's compliance department has made significant efforts to contact the relevant agencies and/or state where the judgment was rendered. However, following discussions with [the] FINRA principal examiner . . . it was revealed that an update to Mr. Murphy's [F]orm [U4] filings is required. The firm will make all necessary updates within the following 30 days.[68]

Contrary to this statement, Columbus did not update Murphy's Form U4 with regard to the Liens within 30 days. Although Murphy sought the assistance of the Columbus compliance department, the responsibility to accurately and timely update the Form U4 was his alone. Also, FINRA advised Murphy in the July 2017 FINRA Rule 8210 request to contact the relevant tax authority to "obtain confirmation that the judgment/lien does or does not pertain to you."[69] Murphy chose not to follow this advice in 2017 or any time thereafter.

3. Murphy's Form U4 Amendment Disclosing the Douglas Elliman Judgment

On July 31, 2017 (the day before responding to FINRA's July 2017 FINRA Rule 8210 request), Murphy amended his Form U4 to disclose the judgment filed against him in February

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[66] CX-29, at 1; Tr. 547.

[67] CX-29, at 1.

[68] CX-30, at 2; Tr. 553-54.

[69] CX-29, at 2.

2015 for $738,687 in favor of Douglas Elliman, LLC.[70] Although FINRA had brought this judgment to Murphy's attention in its June 2017 FINRA Rule 8210 request,[71] Murphy represented on his Form U4 that he had learned of the judgment on July 3, 2017.[72] He was aware at the time he filed the amended Form U4 that the judgment did not appear in his credit reports and thus that his credit reports were incomplete and unreliable.[73]

4. Murphy's On-The-Record Testimony

FINRA staff examined Murphy in on-the-record testimony ("OTR") on November 14, 2017.[74] Murphy was represented by counsel in this testimony.[75] FINRA staff showed Murphy six of the Lien documents.[76] When showing Murphy the $4,164,953 IRS Lien document, FINRA staff identified the document on the record as "a federal tax lien filed by the Internal Revenue Service against Mr. Murphy on January 30th, 2014 in the amount of $4,164,952.59."[77] FINRA staff identified the other IRS Lien documents in the same manner.[78]

When showing Murphy the $334,716 New York Warrant document, FINRA staff identified the document as "a warrant issued by the New York State Department of Taxation and Finance against you and [Murphy's spouse] on February 17, 2015 in the amount of $334,715.90."[79] FINRA staff identified the other New York Warrant documents in the same manner.[80]

As FINRA staff showed the Lien documents to Murphy in the OTR, they marked the documents as exhibits, and the documents are marked as hearing exhibits CX-2, CX-3, CX-4, CX-5, CX-6, and CX-7. After seeing the Lien documents in his OTR, Murphy stated, "You've shown copies of liens today, or warrants today. I don't know where you received them from. I would love to show them to my attorney."[81] Yet after the OTR, neither Murphy nor his attorney requested entry into FINRA's New York District Office to review the Liens or the OTR transcript.[82] In the hearing, Murphy testified that he did not remember asking any FINRA staff

[70] Tr. 119, 529; CX-1; CX-42, at 26-27.

[71] CX-26, at 1.

[72] Tr. 737; CX-42, at 27.

[73] Tr. 760.

[74] Tr. 125, 554-55; CX-66.

[75] Tr. 555; CX-66, at 3.

[76] CX-66, at 56, 78, 84-85, 94, 96, 100.

[77] CX-66, at 56.

[78] CX-66, at 84-85, 94.

[79] CX-66, at 78.

[80] CX-66, at 96, 100.

[81] CX-66, at 110-11.

[82] Tr. 134, 286, 570-71, 573-74.

member for more time to look at the documents in his OTR.[83] He took no steps, either personally or through his CPA, to call the IRS or the New York State Department of Taxation and Finance to ask whether liens had been filed against him.[84]

5. FINRA's February 2018 FINRA Rule 8210 Request

FINRA staff sent Murphy a FINRA Rule 8210 request on February 16, 2018.[85] Staff attached six Lien documents to this request.[86] The Principal Examiner in the cause examination testified that FINRA staff sent the Lien documents to Murphy because "[they] felt that [they] had given Mr. Murphy plenty of opportunities to report the tax liens and he didn't."[87] Murphy testified that, although he had then received the Lien documents, he did not amend his Form U4 because he was still contesting everything about the Liens, including whether they were ever properly filed.[88] He responded to the FINRA Rule 8210 request in a letter from his attorney on March 16, 2018.[89] His response letter stated that a composite credit report combining information from three separate credit reporting companies turned up no liens against him:

> Mr. Murphy ordered a new credit report dated March 14, 2018, a copy of which is attached hereto as Exhibit 1a . . . As you can see, the three leading credit reporting agencies did not turn up any public records to support the notion that there are filed tax liens currently against Mr. Murphy. In addition, his credit score is between [xxx] and [xxx],[90] improbable credit scores if someone had more than $5,600,000 in outstanding tax liens, as you have alleged in the chart within Request No. 1.[91]

Murphy admits that, after receiving the February 2018 FINRA Rule 8210 request, he did not call the IRS to ask about the Liens.[92] Murphy did not ask his CPA to call the IRS.[93] Nor did

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[83] Tr. 565.

[84] Tr. 459.

[85] CX-33.

[86] Tr. 134, 754; CX-33, at 7-16.

[87] Tr. 314.

[88] Tr. 735. There is no evidence, however, that Murphy contested the IRS Liens with the IRS. *See* Tr. 897 (Murphy's CPA never filed any forms on behalf of Murphy to challenge the Liens because Murphy "was never served a copy [of the Lien documents] under 6320 that would enable [his] rights to attach at that moment in time").

[89] CX-34.

[90] The actual credit scores are redacted from this Hearing Panel Decision.

[91] CX-34, at 1. Beginning with the third disclosure letter two years before (February 2016), RAD had informed Murphy that "[c]redit checks are not sufficient to research the event." CX-21, at 1.

[92] Tr. 468-69, 496.

[93] Tr. 471.

Murphy call the New York Department of Taxation and Finance about any of the New York Warrants.[94]

FINRA responded to Murphy's response letter on April 19, 2018.[95] FINRA's response letter, addressed to Murphy's attorney, again informed Murphy of six Liens:

> To the extent that you are contending that Mr. Murphy does not have any tax liens that were filed against him, FINRA has identified what appear to be six unsatisfied (and one recently satisfied) tax liens that were filed against Mr. Murphy by the Internal Revenue Service and the New York State Department of State.[96]

FINRA provided Internet links to enable Murphy to research the IRS Liens and the New York Warrants for himself, and employees in Columbus's compliance department conducted searches in those links.[97] Murphy testified that "my compliance department came in and said this actually came up, this was filed. So we disclosed it."[98] Murphy decided to "just disclose this, give up, disclose this information now."[99]

G. Murphy's Form U4 Amendments Related to Tax Liens

On May 18, 2018, Columbus filed two Form U4 amendments for Murphy.[100] Question 14M of Form U4 asked, "Do you have any unsatisfied judgments or liens against you?"[101] Murphy answered this question "Yes."[102] One Form U4 amendment disclosed the IRS Liens (totaling $5,223,040), and the other disclosed three of the New York Warrants (totaling $746,846).[103] Murphy testified that he disclosed these combined lien amounts based on FINRA's direction to make one combined entry to each Form U4 amendment, but to explain that there were three different liens.[104]

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[94] Tr. 474, 1003-04.

[95] Tr. 138, 593-94; CX-35.

[96] CX-35, at 1 (parentheticals omitted).

[97] Tr. 140-41, 316-17; CX-35, at 1.

[98] Tr. 598.

[99] Tr. 646-47.

[100] Tr. 624, 629, 943; CX-46; CX-48.

[101] CX-46, at 12; CX-48, at 12.

[102] CX-46, at 12; CX-48, at 12; Tr. 626, 630.

[103] Tr. 148-50, 626, 631; CX-46, at 29; CX-48, at 29.

[104] Tr. 734; *accord* 740-41. These Form U4 amendments did not include the Douglas Elliman judgment. As described earlier in this Hearing Panel Decision, Murphy disclosed that judgment in a Form U4 amendment on July 31, 2017. CX-42, at 27.

In the Form U4 amendments, Murphy responded to the prompt "Date individual learned of the Judgment/Lien (MM/DD/YYYY)" with the answer "04/19/2018."[105] Murphy marked this as an "exact" date, rather than one requiring "explanation."[106] He testified that he answered with that date because that was when Columbus's compliance department found the Liens in the databases of the websites provided by FINRA.[107]

On February 26, 2019, Columbus filed a Form U4 amendment for Murphy disclosing the $61,500 New York Warrant.[108] In this Form U4 amendment, Murphy stated that he learned of the Warrant on April 19, 2018.[109] He added, "This debt was left out of a previous disclosure by mistake. It was meant to be filed in May of 2018."[110] Murphy stated that the Warrant was satisfied in early 2018.[111]

III. Conclusions of Law

A. Murphy Failed to Amend His Form U4 and Provided Misleading Information on His Form U4, in Willful Violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010

1. Murphy Committed the Violation

Enforcement charges Murphy with willfully violating Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by failing to amend his Form U4 to disclose the Liens and by providing misleading information as to when he first learned of the Liens. Article V, Section 2(c) 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."[112] FINRA Rule 1122 prohibits an associated person from failing to correct an incomplete or inaccurate FINRA filing after notice of the deficiency or inaccuracy:

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

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[105] Tr. 149-50, 627, 632; CX-46, at 29; CX-48, at 29.

[106] CX-46, at 29; Tr. 627.

[107] Tr. 646-47; *accord* Tr. 734, 741.

[108] Tr. 150-51, 634-35, 741-42; CX-50, at 33.

[109] Tr. 636-37; CX-50, at 12, 33.

[110] CX-50, at 33.

[111] CX-50, at 34; Tr. 637-38. When Murphy filed his February 26, 2019 Form U4 amendment, IRS Liens totaling $5,223,040, and New York Warrants totaling $746,846, remained outstanding. Tr. 638-39; CX-50, at 34-35.

[112] *Accord Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *17 (July 31, 2019).

FINRA Rule 1122 applies to Form U4, which FINRA uses to screen associated persons and monitor their fitness for registration within the securities industry.[113] An associated person has the obligation to ensure that the information in his Form U4 is truthful and accurate,[114] and must keep it current at all times.[115] Intentionally reporting misleading information on Form U4 is a violation of FINRA Rules 1122 and 2010.[116] Question 14M of Form U4 asks, "Do you have any unsatisfied judgments or liens against you?"[117] If the answer is "yes," the associated person is required to provide details about the judgments or liens, including the "[date] the individual learned of the Judgment/Lien (MM/DD/YYYY)."[118]

Murphy violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122. Question 14M of Form U4 required Murphy to disclose the Liens in supplementary amendments because the Liens were "unsatisfied . . . liens against" him.[119] In May 2015, RAD notified Murphy of the $4,164,953 IRS Lien, and in July 2015, RAD notified Murphy of the $334,716 New York Warrant.[120] Yet Murphy did not disclose these Liens, or the Liens that were filed later, until he made Form U4 amendments on May 18, 2018.[121] Even then, he misrepresented the date he first learned of the Liens, falsely stating it was on April 19, 2018, within 30 days of the date he amended his Forms U4.

Murphy's failure to update his Form U4, and his inaccurate update on May 18, 2018, also violated FINRA Rule 2010. 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."[122] A violation of FINRA Rule 1122 is a violation of FINRA Rule 2010.[123]

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

[114] *Dep't of Enforcement v. Wyche*, No. 2015046759201, 2019 FINRA Discip. LEXIS 2, at *8 (NAC Jan. 8, 2019).

[115] *Dep't of Enforcement v. Ortiz*, No. 2014041319201, 2017 FINRA Discip. LEXIS 5, at *28 (NAC Jan. 4, 2017).

[116] *Dep't of Enforcement v. Ottimo*, No. 2009017440201, 2017 FINRA Discip. LEXIS 10, at *27 (NAC Mar. 15, 2017), *rev'd and remanded in part*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588 (June 28, 2018).

[117] CX-46, at 12; CX-48, at 12.

[118] CX-46, at 29-30; CX-48, at 29-31.

[119] CX-46, at 12; CX-48, at 12.

[120] CX-17, at 1-2; CX-19, at 1-2.

[121] Tr. 148-49, 624-25, 629; CX-46, at 29-30; CX-48, at 29-30.

[122] *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). FINRA Rules—including FINRA Rule 2010—"shall apply to all members and persons associated with a member," and associated persons "shall have the same duties and obligations as a member under the Rules." FINRA Rule 0140(a).

[123] *Dep't of Enforcement v. Saliba*, No. 2013037522501, 2019 FINRA Discip. LEXIS 1, at *38 (NAC Jan. 8, 2019) ("[T]he violation of another FINRA rule is a violation of FINRA Rule 2010."), *appeal docketed*, Nos. 3-18989, 3-18990 (SEC Feb. 6, 2019); *Wyche*, 2019 FINRA Discip. LEXIS 2, at *15-16 (Failure to report a Form U4 reportable event "within 30 days of learning of it . . . violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.").

2. Murphy's Violation Was Willful

The Complaint alleges that Murphy's violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 was willful. An associated person who willfully omits any material fact required to be disclosed in an application or report to FINRA is subject to statutory disqualification.[124] A willful violation means that the associated person intentionally commits the act that constitutes the violation.[125] In the context of a Form U4, he commits a willful violation if he "'subjectively intend[s] to omit material information from' his required disclosures."[126] Willfulness does not require that an associated person know he is violating FINRA By-Laws or Rules.[127]

Murphy's Form U4 violation was willful because he subjectively intended to omit material information—the Liens—from his required disclosure. When Murphy was first notified of the $4,164,953 IRS Lien in the May 2015 RAD disclosure letter, he had a choice: he could verify that the Lien existed and disclose it on his Form U4, or he could come up with one or more reasons not to disclose it (like the Lien not appearing on his credit reports). He had the same choice each time a lien was brought to his attention. When FINRA showed him the Lien documents in his November 2017 OTR, he again had the choice of disclosing the Liens or continuing with his arguments for non-disclosure. By the time of his OTR, a FINRA cause examination of this matter was under way, and the Hearing Panel finds it deeply troubling that he still failed to timely amend his Form U4.[128] The length of the delay and his continued defiance—despite evidence of the Liens provided to him by FINRA as well as the regulatory pressure brought to bear on him—reflect a conscious decision not to disclose the Liens, most likely to avoid harm to his businesses, including Columbus, Rosecliff Capital, and Rosecliff Ventures.

Murphy testified that he is familiar with his Form U4 reporting obligations.[129] Murphy knew that an amendment to Form U4 was required to be filed with FINRA no later than 30 days after learning of the facts or circumstances giving rise to the amendment.[130] He knew he was required to disclose a lien against him on his Form U4.[131] He understood it was his responsibility

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[124] 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; *McCune*, 2016 SEC LEXIS 1026, at *14. 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.

[125] *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *13 (Oct. 31, 2018).

[126] *Holeman*, 2019 SEC LEXIS 1903, at *38 (*quoting Robare v. SEC*, 922 F.3d 468, 479 (D.C. Cir. 2019)). According to *Holeman*, extreme recklessness may constitute a lesser form of intent. *Id*. But instead of relying on the elements of extreme recklessness, the Hearing Panel finds that Murphy subjectively intended to omit material information from his required disclosure.

[127] *Holeman*, 2019 SEC LEXIS 1903, at *38.

[128] *Holeman*, 2019 SEC LEXIS 1903, at *46.

[129] Tr. 382.

[130] Tr. 433-34.

[131] Tr. 438.

to know whether he had liens and to report them.[132] He understood it was important to the investing public for an associated person to have accurate information on his Form U4.[133]

Yet Murphy chose not to timely disclose the Liens. Murphy chose not to direct his CPA, who had Murphy's power-of-attorney with regard to the IRS, to ask that tax authority whether there were liens against Murphy. He chose not to contact the New York State Department of Taxation and Finance and ask whether there were tax warrants against him. We therefore find that Murphy acted willfully.

3. Murphy's Violation Was Material

A fact not disclosed on Form U4 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.[134] Materiality is an objective standard.[135] Because of the importance the securities industry places on full and accurate disclosure, all information reportable on Form U4 is presumed to be material.[136] Accurate disclosure on Form U4 of an associated person's serious financial problems is of inarguable importance in the industry.[137] The Securities and Exchange Commission and FINRA have consistently held that an undisclosed tax lien is significant information.[138]

The Liens that Murphy failed to timely disclose on his Form U4—and the inaccurate date he represented as to when he learned of the Liens—were material. Reasonable regulators, employers, and customers would view the Liens as significantly altering the total mix of information made available about Murphy. The total amount of the Liens—$6,031,387—was staggering. The number of the Liens—seven—and the length of time the Liens were not disclosed—up to four years—would raise serious questions about Murphy's ability to manage his financial affairs, the financial pressures he was facing, and his ability to comply with FINRA By-Laws and Rules.[139]

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[132] Tr. 494.

[133] Tr. 385.

[134] *Riemer*, 2018 SEC LEXIS 3022, at *15-16.

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

[136] *Dep't of Enforcement v. Holeman*, No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at *23 (NAC May 21, 2018), *aff'd*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903 (July 31, 2019).

[137] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *47 (Nov. 9, 2012).

[138] *Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *53 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *petition for review denied*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

[139] *Holeman*, 2019 SEC LEXIS 1903, at *34 ("The Second Circuit and the Commission found the failure to disclose liens on Form U4 to be material omissions after considering the number and dollar amount of the liens and period of time during which the information was not disclosed.").

B. Murphy's Contentions That He Should Not Be Held Liable Lack Merit

1. Murphy's Contention That He Did Not Have Notice of the Liens

a. No Statutorily Required Five-Day Notice

In the hearing, Murphy claimed for the first time that he was not required to disclose the Liens on his Form U4 because he did not receive the statutorily required five-day notice of the Liens from the IRS or New York by certified mail.[140] Murphy testified that he did not know whether the Liens were filed against him and, although he knew that he owed millions of dollars in back taxes, he did not receive any notice "as far as a lien goes."[141] Because he did not receive notice, he claims, "[t]hose liens that you claim [were] filed against me, were never liens filed against me."[142] He testified that "throughout this process, I didn't believe there were any tax liens,"[143] and "I don't believe there are tax liens filed against me as we sit here today."[144]

Contrary to Murphy's contention, the Hearing Panel finds that the Liens were liens that he was required to disclose on his Form U4. Under Section 6321 of the United States Tax Code, if any person liable to pay any tax fails to do so after notice and demand, the amount of the tax—including any interest, addition to tax, and assessable penalty—constitutes a lien in favor of the United States on all property, and rights to property, belonging to such person.[145] The lien is perfected when the assessment is made, and is effective even if the lien is not recorded in public records.[146] In particular, the lien is enforceable against the delinquent taxpayer.[147]

The result is the same under New York Tax Law. Section 692 provides that tax warrants are effective on the date they are entered in the judgment docket. A statutory notice, such as a tax warrant, is deemed properly mailed by registered or certified mail to the delinquent taxpayer's last known address. Section 681(a) of the New York Tax Law does not require actual receipt by

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[140] As the discussion in this Hearing Panel Decision shows, it is not necessary for the Hearing Panel to make a determination whether Murphy in fact received the five-day statutory notice.

[141] Tr. 380-81; *accord* Tr. 658-59, 994-96, 999.

[142] Tr. 461; *accord* Tr. 1000-01.

[143] Tr. 702.

[144] Tr. 493; *see* Tr. 518-19. This testimony is refuted by the fact that Murphy eventually amended his Form U4 to disclose the Liens. CX-46, at 12; CX-48, at 12.

[145] *Kearse v. Commissioner*, T.C. Memo 2019-53, 2019 Tax Ct. Memo LEXIS 55, at *6 (U.S. Tax Ct. May 20, 2019). The lien applies to both real and personal property.

[146] *Kearse*, 2019 Tax Ct. Memo LEXIS 55, at *6; *accord Entenmann's, Inc. v. United States*, No. 8:97CV623, 1998 U.S. Dist. LEXIS 22357, at *12-13 (D. Neb. Oct. 9, 1998). The court in *Entenmann's* noted that "a federal tax lien is effective upon assessment *against the whole world*." *Id*. at 12 (emphasis added). According to Murphy's testimony in his November 2017 OTR, the first assessment for his taxes was made in 2012 or 2013, when he "got a letter in the mail" saying, "You owe taxes." CX-66, at 60.

[147] *Freedman v. United States*, No. 02-21060-CIV-UNGARO-BENAGES, 2003 U.S. Dist. LEXIS 3815, at *9 (S.D. Fla. Feb. 24, 2003).

the taxpayer; the notice sent by certified or registered mail to the taxpayer's last known address is valid and sufficient whether or not the taxpayer actually receives it.[148]

As for disclosing a tax lien on Form U4, Question 14M places no limitation on the kinds of liens that must be disclosed.[149] If an associated person finds Question 14M to be ambiguous, he has a duty to determine whether disclosure is required.[150] In this case, after receiving notice of the Liens from RAD's disclosure letters beginning in May 2015, and especially after being shown the Lien documents in his November 2017 OTR, Murphy had an obligation, if he harbored any doubts, to determine whether the Liens were liens that he was required to disclose in response to Question 14M. Murphy could have done this by, for example, calling the IRS and the New York State Department of Taxation and Finance and asking if these tax authorities had filed any liens against him. Yet Murphy chose not to contact, or direct his CPA to contact, either tax authority to make such an inquiry.[151]

Murphy did not contest the validity of the Liens with either tax authority. The RAD disclosure letters included a telephone number for RAD that Murphy could call if he had any questions, but he did not call RAD to dispute that there were liens filed against him.[152] The IRS has a procedure for getting a federal tax lien released, and has issued IRS Publication 1450, titled "Instructions on How to Request a Certificate of Release of Federal Tax Lien."[153] Yet there is no evidence that Murphy took any action to obtain a Certificate of Release of the IRS Liens on the ground that he had not received the statutory notice.[154]

The Lien documents contain evidence, which Murphy does not dispute, that they were filed in the public records of the City Register of New York (IRS Liens) and the County Clerk of

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[148] *In re Oberlander*, DTA No. 828957, 2019 N.Y. Tax LEXIS 10, at *8, 10 (N.Y. Div. Tax App. July 18, 2019); *In re Katz*, 1991 N.Y. Tax LEXIS 602, at *18-19 (N.Y. Tax App. Tribunal Nov. 14, 1991). Three of the four New York Warrants carried a residential address for Murphy that matched his residential address on CRD. CX-6; CX-7; CX-8.

[149] *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *25 (NAC Mar. 16, 2017), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *petition for review denied*, 750 F. App'x 821 (11th Cir. 2018).

[150] *Holeman*, 2019 SEC LEXIS 1903, at *24; *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *23 (Oct. 20, 2011).

[151] Tr. 459, 468, 470-71, 474. In his second OTR, taken in September 2018, Murphy could not recall whether he directed his CPA to contact the IRS on his behalf to determine whether a tax lien had been filed against him. CX-66, at 171-72. Murphy did not direct the CPA or anyone else to look in public record locations for a lien filed against him for back taxes. CX-66, at 184, 202.

[152] Tr. 459-60.

[153] Respondent Michael Patrick Murphy's Post-Hearing Brief, at 20.

[154] *See* Tr. 897 (the CPA never filed any forms on behalf of Murphy to challenge the Liens because Murphy "was never served a copy under 6320 that would enable [his] rights to attach at that moment in time"). The Hearing Panel makes no determination whether Murphy had valid reasons to dispute the validity of the Liens, but even if he did, this would not obviate his obligation to disclose the Liens. He was required to disclose the Liens even while he investigated and contested their validity.

New York (New York Warrants).[155] New York was and is Murphy's city and county of residence. The lien documents are file-stamped and signed. The New York Warrants include the name of Murphy's spouse.[156]

Computer records show that liens recorded in the database of the Office of the City Register of New York correspond to the City Register file numbers and filing dates appearing on the IRS Lien documents.[157] Computer records from the New York State Tax Warrant System show that the New York Warrants were duly filed and recorded in public records.[158] FINRA staff obtained a copy of the first New York Warrant for $334,716 by going to the state court.[159] Murphy could have sent a Columbus employee to the court or to public records offices in New York (Columbus's location) to retrieve the file of the first IRS Lien or the first New York Warrant, which RAD had identified by docket number in its disclosure letters.

The existence of the Liens was easily determinable through a review of the references RAD provided him in 2015 and through direct communication with the IRS and the New York State Department of Taxation and Finance. Murphy chose to rely on indirect evidence—that he had not been served with a notice, that his CPA was unaware of the IRS Liens, that he was able to buy and sell real property without being encumbered by a levy, that the Columbus compliance department could not find the Liens, that his credit reports did not list any liens—when he was in a position to contact the relevant tax authorities directly and have them inform him about the existence of any liens.

Murphy admits that he owed millions of dollars in back taxes to the IRS, and hundreds of thousands of dollars to New York.[160] That the tax authorities filed the Liens could not have come as a surprise to Murphy. Murphy's argument that the Liens did not exist is not supported by any statute or precedent.

b. Form U4 Amendment Not Required Without Five-Day Notice

Murphy also contends that because he did not receive statutory notice, he did not "learn[] of the facts or circumstances giving rise to the amendments," as called for by Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122. Contrary to Murphy's argument, he received sufficient notice as a result of multiple communications from FINRA. Article V, Section 2(c) and FINRA Rule 1122 do not require notice of a lien from the tax authority and, in fact, do not limit

[155] CX-2, at 1; CX-3, at 1; CX-4, at 1; CX-5, at 1; CX-6, at 1; CX-7, at 1; CX-8, at 1. In the pre-hearing phase, Murphy was offered the opportunity to object to the admission of Enforcement's proposed hearing exhibits, including the Lien documents. He did not object to the admissibility of the Lien documents on grounds of authenticity or any other ground.

[156] CX-3, at 1; CX-6, at 1; CX-7, at 1; CX-8, at 1.

[157] CX-35, at 13.

[158] CX-9, at 1-2. "Anyone can access this website." Tr. 105.

[159] Tr. 97.

[160] Tr. 443, 508-09.

the sources from which the associated person can learn of the facts or circumstances giving rise to the amendment.

Murphy first received notice of the Liens from FINRA in May and July 2015, when RAD sent its disclosure letters informing Columbus and Murphy of the $4,164,953 IRS Lien and the $334,716 New York Warrant. Murphy received notice from the February 2016 RAD disclosure letter that "[c]redit reports [were] not sufficient to research the event."[161] In that same disclosure letter, RAD informed Murphy that the first New York Warrant matched both his name and his residential address.[162]

Murphy received further notice of the Liens in June 2017 in the form of a FINRA Rule 8210 request identifying the IRS and New York as the tax authorities involved, the dates the Liens were filed, and the amounts of the Liens.[163] And he received further notice of the Liens in his OTR in November 2017, when FINRA staff showed him the actual Lien documents, identified the documents for the record, and marked them as exhibits.[164] Finally, he received notice in February 2018, when FINRA staff attached the Lien documents to a FINRA Rule 8210 request sent to his attorney.[165]

As a result of this information, Murphy learned of the facts and circumstances giving rise to the requirement that he amend his Form U4.

2. Murphy's Contention That His Tax Transcripts Show the IRS Liens Were Not Filed

Murphy contends that his IRS tax transcripts show the IRS Liens were not filed.[166] Murphy testified that his tax transcripts do not reflect any lien filed against him for any monetary amount. He stated, "[There is] one lien filed against me for zero dollars. Nothing to do with the

[161] CX-21, at 1.

[162] CX-21, at 1-2; Tr. 100.

[163] CX-26, at 1.

[164] CX-66, at 56, 78, 84-85, 94, 96-97, 100.

[165] CX-33, at 7-16.

[166] In the words of the IRS, a tax transcript "shows a summary of your tax returns and subsequent actions taken. These actions could include payments, amended returns, and corrections we made to the original return due to math mistakes." RX-9, at 1, 4, 7, 10. The parties obtained Murphy's tax transcripts after Enforcement sent Murphy's attorney a post-complaint FINRA Rule 8210 request attaching an IRS authorization Form 4506-T, authorizing the IRS to release his tax transcripts, for tax years 2013 through 2016. RX-8. Although the tax transcripts were admitted into evidence as a single hearing exhibit, they are actually four separate three-page documents: a tax transcript for tax year 2013, a tax transcript for tax year 2014, etc.

dates that are on your list here."[167] Thus, according to Murphy, "based on [his] tax transcript from the Internal Revenue Service, there were no liens filed against [him]."[168]

The tax transcripts are limited to tax years 2013, 2014, 2015, and 2016, whereas the tax years for which IRS Liens were filed against Murphy were 2007, 2008, and 2011–2014.[169] The tax transcripts contain several entries with a value of zero, even for events that undoubtedly took place. For example, the entries for offers in compromise are carried at a value of zero.[170]

For tax years 2013 and 2014 (to which the third IRS Lien, for $786,727, pertained in part), the tax transcripts show that the IRS placed a lien on assets due to a balance owed on June 3, 2016.[171] The IRS issued a notice of lien filing and right to collection due process hearing on June 7, 2016.[172] Chronologically, this notice of lien filing corresponded to the third IRS Lien, which was filed June 13, 2016. As already stated, this IRS Lien covered the 2013 and 2014 tax years, among others, and one would expect an entry for the notice of this lien being issued to appear in the tax transcripts for these tax years—which it does.[173]

For tax years 2015 and 2016, the tax transcripts do not show any lien being filed.[174] But that is because the IRS Liens do not cover tax years 2015 and 2016.[175]

3. Murphy's Contention That He Relied on His CPA

In the hearing, Murphy claimed for the first time that he relied on the advice of his CPA in determining that the Liens did not exist and he was not required to disclose them. The Hearing Panel finds, however, that any reliance Murphy placed on the CPA was not reasonable.[176]

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[167] Tr. 383.

[168] Tr. 647.

[169] The record does not disclose why Enforcement did not direct Murphy to seek tax transcripts for tax years 2007, 2008, 2011, and 2012, the years to which the IRS Liens principally pertained.

[170] RX-9, at 2, 3, 6, 9, 11-12.

[171] RX-9, at 3, 6.

[172] RX-9, at 3, 6.

[173] CX-4, at 3; RX-9, at 3, 6.

[174] RX-9, at 8-9, 11-12.

[175] CX-2, at 2; CX-4, at 3; CX-5, at 2.

[176] *Dep't of Enforcement v. Jarkas*, No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *54 (NAC Oct. 5, 2015) ("'while reasonable reliance on competent legal advice can be mitigating for purposes of assessing sanctions,' such reliance must be *reasonable* and based on *competent* legal advice") (emphasis original) (citations omitted) (quoting *Dep't of Enforcement v. Walblay*, No. 2011025643201, 2014 FINRA Discip. LEXIS 3, at *16 (Feb. 25, 2014)), *aff'd*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285 (Apr. 1. 2016); *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *67-68 (NAC July 18, 2014) ("To establish that advice of counsel is mitigating for purposes of sanctions under the Guidelines, [the respondent] must demonstrate 'reasonable reliance on competent legal . . . advice'") (quoting *Dept't of Enforcement v. Fergus*, No. C8A990025, 2001 NASD Discip. LEXIS 3, at *48 (NAC May 17, 2001)), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015). The Hearing Panel rejects Murphy's related effort to assign blame to his compliance

Murphy admits that the CPA was not responsible for Murphy's Form U4 filings.[177] The CPA testified that he did not know what Form U4 reporting obligations were.[178]

The CPA did nothing to determine whether Murphy had any tax liens. According to the CPA, he spoke on the telephone with the IRS numerous times while acting as power-of-attorney for Murphy,[179] but in none of those conversations did he ask the revenue agent to search the IRS database to see if there were any liens filed against Murphy.[180] The CPA never wrote to the IRS to ask whether Murphy had any tax liens. The CPA did not have Murphy's power-of-attorney to deal with New York and, in his hearing testimony, could not recall ever giving Murphy advice about the New York Warrants.[181]

With 25 years of securities industry experience, it was unreasonable for Murphy to rely on the CPA after he received notice from FINRA, beginning in May and July 2015, that the tax authorities had filed the Liens in public records offices in Murphy's city and county of residence. His reliance was even more unreasonable when FINRA staff showed him the actual Lien documents in his OTR in November 2017. It was also unreasonable for him to fail to instruct his CPA to make direct inquiries of the tax authorities with regard to the Lien documents, given his Form U4 disclosure obligations.

In the hearing, the CPA testified that: "there is no lien until you get served" with the five-day statutory notice from the IRS;[182] if the taxpayer does not receive a notice and Form 12153 from the IRS, he "can never file a protest" of a tax lien;[183] the IRS stops all collection process, including the filing of liens, when the taxpayer files an offer in compromise;[184] the IRS revenue agent would have informed the CPA if a lien had been filed;[185] and, with reference to the tax transcripts, "if there was an actual lien placed, they would actually have a dollar amount" in the transcripts.[186] The Hearing Panel rejects this testimony, for several reasons. First, to the extent that the CPA testified about the elements of federal or New York law concerning the perfection of tax liens or IRS practices and procedures, such testimony bordered on expert testimony, and Murphy never moved for leave to present expert testimony. Second, if Murphy had moved for

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department. When deciding whether to disclose tax liens on Form U4, an associated person is responsible for his own actions, and cannot shift that responsibility to his firm. *Holeman*, 2019 SEC LEXIS 1903, at *27.

[177] Tr. 394.

[178] Tr. 886.

[179] Tr. 819.

[180] Tr. 909-10.

[181] Tr. 887-88.

[182] Tr. 844; *accord* 866, 885-86, 919.

[183] Tr. 915-16.

[184] Tr. 858-59.

[185] Tr. 864; *accord* Tr. 908.

[186] Tr. 868.

such leave, the undersigned Hearing Officer would have denied the motion, because it is inappropriate to have expert testimony on legal subjects.[187] Third, the CPA's testimony that notices of tax liens have to be served on the taxpayer in order for the liens to be perfected is contradicted by statutory and case authority, as discussed earlier in this Hearing Panel Decision.[188]

4. Murphy's Contention That He Relied on FINRA Regulatory Notice 15-05

Murphy argues that he was able to rely on the absence of the Liens from his credit reports as the basis for not disclosing the Liens on his Form U4. Murphy testified, "[W]e had a notice to members that said you could rely on credit reports."[189] The notice Murphy refers to is FINRA Regulatory Notice 15-05, issued in March 2015, in which FINRA adopted NASD Rule 3010(e), relating to background checks on registration applicants.[190] Murphy testified that he relied on this Regulatory Notice when, instead of disclosing the Liens, he provided FINRA with credit reports showing no liens.[191]

Contrary to Murphy's assertion, Regulatory Notice 15-05 does not apply to his obligation to ensure that his Form U4 is current. This Regulatory Notice pertains to a FINRA member firm's obligation to conduct background checks under FINRA Rule 3110(e), not to an associated person's obligation to disclose tax liens under Article V, Section 2(c) of FINRA's By-Laws and FINRA Rule 1122. The Regulatory Notice does not mention Article V, Section 2(c) or FINRA Rule 1122. Because an associated person has more access to the information that is required to be disclosed on Form U4, he has a heavier burden under Article V, Section 2(c) and FINRA Rule 1122 to investigate and disclose tax liens than a member firm's supervisory burden under FINRA Rule 3110(e). Moreover, the Regulatory Notice does not apply to the member firm's obligation at the time of amendment. It pertains to the firm's supervisory obligation "before the firm applies to register [the] applicant with FINRA,"[192] whereas the associated person's obligation to amend his Form U4 arises after his registration and, as in this case, can arise many years after registration.

Furthermore, even under Regulatory Notice 15-05, Murphy could not rely on his credit reports to avoid disclosure. The thrust of Regulatory Notice 15-05 is to promote full disclosure of the background and qualifications of an associated person, not to provide the associated person

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[187] *Dep't of Enforcement v. William H. Murphy & Co.*, No. 2012030731802, 2018 FINRA Discip. LEXIS 24, at *63 (NAC Oct. 11, 2018) ("Expert testimony that solely provides legal standards and conclusions is generally disfavored"), *appeal docketed*, No. 3-18895 (SEC Nov. 9, 2018); *accord United States v. Russo*, 74 F.3d 1383, 1395 (2d Cir. 1996) ("[E]xpert testimony must not usurp the roles of judge and jury by offering legal conclusions").

[188] *See supra* Section III.B.1.a.

[189] Tr. 508.

[190] FINRA Regulatory Notice 15-05 (Mar. 2015), https://www.finra.org/rules-guidance/notices/15-05. This Regulatory Notice was also admitted into evidence as RX-13.

[191] Tr. 538-39.

[192] RX-13, at 2.

with reasons not to make a required disclosure. The Regulatory Notice states that "FINRA does not place any limits on the scope of . . . a background investigation—a firm must obtain *all* the necessary information to make an evaluation. Firms should consider *all* available information gathered in the pre-registration process for this purpose . . ."[193] Information originating from FINRA itself, in the form of RAD's disclosure letters, and information that FINRA included in its FINRA Rule 8210 requests, would be "necessary information to make an evaluation" of whether an associated person has unsatisfied tax liens against him. Lien documents shown to the associated person in his OTR would also be necessary information. Thus, even if the Regulatory Notice were applied to this case, a member firm could not rely on the associated person's credit reports after FINRA had provided the firm with information that tax liens had been filed against him.

Additionally, Murphy's testimony that Regulatory Notice 15-05 was the basis for his reliance on his credit reports is not credible.[194] Murphy could not cite any response he or Columbus made to RAD's disclosure letters that mentioned the Regulatory Notice.[195] In the cause examination, he did not raise the Regulatory Notice as a reason why he did not disclose the Liens.[196] He did not mention the Regulatory Notice in his OTR,[197] or to his chief compliance officer.[198]

Finally, Murphy's credit reports were unreliable. The reports failed to show the Douglas Elliman judgment, which had been duly entered against Murphy, as shown in the publicly available state court file.[199] Thus, as of July 2017, when he amended his Form U4 to disclose this judgment, he knew that his credit reports were incomplete and unreliable. Given the Elliman judgment, the detailed information that FINRA provided him about the Liens, and the fact that FINRA showed him the Lien documents in his OTR, he knew that any reliance on his credit reports was misplaced. In fact, FINRA informed Murphy, beginning in February 2016, that "[c]redit reports [were] not sufficient to research the event."[200]

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[193] *Id*. (emphasis added).

[194] Tr. 508.

[195] Tr. 509-10.

[196] Tr. 340-41, 509-10, 541-42.

[197] Tr. 561; CX-66, at 1-299.

[198] Tr. 961-62. Murphy also cites a FINRA Information Notice dated May 18, 2018, the same day he amended his Form U4 to disclose the Liens; thus, it was impossible for him to have relied on that Information Notice for any purpose. CX-46, at 1, 29; CX-48, at 1, 29; RX-14, at 1.

[199] CX-1.

[200] CX-21, at 1.

5. Murphy's Contention That the IRS Offers in Compromise and the New York Payment Plan Relieved Him of the Obligation to Disclose the Liens

Murphy contends that because he fulfilled the terms of his IRS offers in compromise and the New York payment plan, there was no need for him to disclose the Liens on his Form U4. In March 2015, Murphy entered into a payment plan for the taxes he owed to New York.[201] He testified that he completed payments under this plan in early 2019.[202] He filed offers in compromise with the IRS to settle his tax liability, but most were denied. This table summarizes the history of his offers in compromise:

Offer in Compromise Submitted	Offer in Compromise Denied
May 2015	May 2016
July 2016	March 2017
July 2017	March 2018
January 2018	September 2018
June 2019[203]	

Since August 2017, Murphy has paid the IRS $7,002 per month under his offers in compromise.[204]

Murphy testified that RAD's disclosure letters implied that a tax lien did not have to be disclosed on Form U4 if, in the words of the disclosure letters, "payment of the event(s) was made in accordance with applicable contractual and/or statutory provisions such that it was never considered unsatisfied and therefore did not meet the requirements for reporting."[205] Thus, Murphy's argument runs, if an associated person adhered to an offer in compromise or payment plan with the tax authority, his tax liens were never considered unsatisfied and therefore did not meet the requirements for reporting.[206]

This argument is not supported by the facts with regard to the $4,164,953 IRS Lien. This Lien was filed on January 30, 2014, but Murphy did not propose an offer in compromise until May 2015.[207] Thus, for a period of 15 months, Murphy was subject to a $4,164,953 Lien that was not "satisfied" and therefore clearly subject to disclosure in his Form U4 beginning in early March 2014.

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[201] RX-22, at 2.

[202] Tr. 670.

[203] RX-4, at 1; RX-5, at 1; RX-6, at 1; RX-7, at 1; RX-9, at 2, 3, 6, 9, 11, 12; RX-22, at 1.

[204] RX-22, at 1, 20-24.

[205] CX-17, at 2; Tr. 681.

[206] Tr. 683; *accord* Tr. 736.

[207] CX-2; RX-9, at 2.

Moreover, Murphy did not "satisfy" his outstanding federal tax debt until the IRS accepted his offer in compromise, which did not occur, if at all, until sometime after June 2019—i.e., long after the IRS Liens had been filed in 2014 and 2016.[208] Murphy did not "satisfy" his outstanding New York tax debt until he entered into a payment plan in March 2015. This was one month after the $334,716 New York Warrant had been filed on February 18, 2015.[209] Murphy admits he does not know whether a tax authority can file a tax lien even though the taxpayer has submitted an offer in compromise.[210] None of the communications from the IRS stated that it would refrain from filing a lien against him.[211]

An associated person is required to disclose tax liens even if he has made offers in compromise or entered into a payment plan with the tax authority. In the case of *Dep't of Enforcement v. The Dratel Group, Inc.*, the National Adjudicatory Council rejected the respondent's argument that "because he was negotiating, or had negotiated, payment plans for his outstanding liens and judgments, he reasonably believed he was not required to disclose them."[212] If Murphy had any doubt in this regard, it was his duty to determine whether disclosure was required. In a case applying the NASD predecessors to Article V, Section 2(c) and FINRA Rule 1122, the Securities and Exchange Commission rejected the respondent's argument that a payment schedule with the IRS made his failure to disclose a tax lien reasonable.[213] The SEC reasoned that "[a]s an associated person, [the respondent] has a duty to comply with all applicable NASD requirements and if he found Question [14M] to be ambiguous, it was his duty to determine whether disclosure was required."[214] Thus, even if an associated person has entered into a payment plan with the tax authority and is paying down a lien, he is still required to disclose it in his Form U4.

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[208] CX-2, at 1; CX-4, at 1; CX-5, at 1. The record does not clearly show if or when the IRS accepted an offer in compromise from Murphy. According to Murphy's tax transcripts, his last known offer in compromise was in June 2019. With regard to the 2013 and 2014 tax years, the IRS wrote off the amount of the balance due on August 12, 2019, but the tax transcripts do not state whether this was because the IRS accepted Murphy's offer in compromise, or whether this was only a bookkeeping entry. RX-9, at 3, 6. If the former, then the IRS accepted the offer in compromise in August 2019.

[209] CX-3; RX-22, at 2. Thus, the first New York Warrant does not fall within the disclosure letter's description of a lien "*never* considered unsatisfied." CX-19, at 2 (emphasis added).

[210] Tr. 543-44. In his September 2018 OTR, Murphy could not recall asking his CPA whether the IRS or New York could file a tax lien against him even if he was on a payment plan. CX-66, at 185. In response to that question, Murphy testified that "I believe my understanding now at this point today is they can file a tax lien against you any time they want." CX-66, at 202.

[211] Tr. 546.

[212] *Dep't of Enforcement v. The Dratel Grp., Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *12 (NAC May 6, 2015).

[213] *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *21-22 (Dec. 7, 2009), *aff'd*, 671 F.3d 210 (2d Cir. 2012).

[214] *Mathis*, 2009 SEC LEXIS 4376, at *22.

6. Murphy's Contention That Enforcement Did Not Send Him Copies of the Lien Documents Until 94 Days After His OTR

Murphy complains that he requested copies of the Lien documents in his OTR, but Enforcement did not send the documents to his attorney until 94 days later. This argument does not advance Murphy's cause. After he received the Lien documents—in February 2018—he still did not amend his Form U4 within 30 days. Instead, he waited until May 18, 2018. And he received notice of the Liens long before his OTR. The RAD disclosure letters in May and July 2015 provided sufficient descriptions of the $4,164,953 IRS Lien and the $334,716 New York Warrant for Murphy and the compliance department of his firm to research whether the Liens had been filed. He did not amend his Form U4 until three years later.

IV. 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.[215] 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 timely file a Form U4 amendment or filing misleading or inaccurate amendments recommends a fine of $2,500 to $39,000.[216] Where aggravating factors are present, adjudicators should consider suspending the respondent for ten business days to six months.[217] Where aggravating factors predominate, adjudicators should consider a fine higher than $39,000 and a suspension of six months to two years.[218] Where the respondent intended to conceal information or mislead, adjudicators should consider a bar.[219]

The considerations specific to this Guideline include the following:

- The nature and significance of the information at issue.
- The number of disclosable events at issue.
- Whether the omission of information was part of an intentional effort to conceal information or an attempt to mislead.

[215] FINRA Sanction Guidelines (2019) ("Guidelines") at 2 (General Principle No. 1), www.finra.org/industry/sanction-guidelines.

[216] Guidelines at 71.

[217] Guidelines at 71.

[218] Guidelines at 71.

[219] Guidelines at 71.

- 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.
- Whether the respondent's misconduct resulted directly or indirectly in injury to other parties and, if so, the nature and extent of the injury.[220]

In determining a sanction for Murphy, the Hearing Panel considers that Form U4 disclosures are an important means of ensuring the integrity of the securities industry. Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and FINRA members to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member.[221] Accurate and timely amendments to Form U4 ensure that these stakeholders as well as public investors have all fact-based, current, and material information about securities professionals.[222]

The Hearing Panel finds that aggravating factors predominate in Murphy's failure to timely amend his Form U4 and his inaccurate amendment. The undisclosed information about the Liens was significant. The total amount of the Liens—$6,031,387—was staggering. The number of the Liens—seven—and the length of time the Liens were not disclosed—up to four years—would raise serious questions about Murphy's ability to manage his financial affairs, the financial pressures he was facing, and his ability to comply with FINRA By-Laws and Rules.[223] Murphy's omission included both federal and state tax liens. He did not accept responsibility for his misconduct and did not disclose the Liens even after FINRA gave him notice of them in RAD disclosure letters and FINRA Rule 8210 requests, showed him the Lien documents in his OTR, and sent his attorney the Lien documents in another FINRA Rule 8210 request.[224]

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[220] Guidelines at 71.

[221] *Dep't of Enforcement v. Fretz*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at *87 (NAC Dec. 17, 2015).

[222] *Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *49 (Aug. 12, 2016), *petition for review denied*, 719 F. App'x 724 (9th Cir. 2018).

[223] Guidelines at 7 (Principal Consideration No. 9: Whether the respondent engaged in the misconduct over an extended period of time); Guidelines at 71 (Specific Consideration No. 1: The nature and significance of the information at issue), (Specific Consideration No. 4: The duration of the delinquency); *Holeman*, 2019 SEC LEXIS 1903, at *34 ("The Second Circuit and the Commission found the failure to disclose liens on Form U4 to be material omissions after considering the number and dollar amount of the liens and period of time during which the information was not disclosed.").

[224] Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct to a regulator prior to detection and intervention by the regulator).

Murphy did not update his Form U4 even though FINRA had warned him on a number of occasions that he was required to do so.[225] The Hearing Panel finds it deeply troubling that Murphy still failed to timely amend his Form U4 after a cause examination had begun.[226] His continued defiance—despite the regulatory pressure brought to bear on him—reflects a conscious decision not to disclose the Liens, most likely to avoid harm to his businesses. He misrepresented the date that he learned of the Liens, demonstrating his lack of regard for FINRA By-Laws and Rules. He falsely stated the date was April 19, 2018, within 30 days of the date he amended his Forms U4.

Murphy's failure to disclose the Liens resulted in potential monetary gain for himself.[227] Exposing his financial problems to the public would risk losing current customers and hurt his ability to attract new customers and investors of both Columbus and his other businesses. Murphy still has millions of dollars in unsatisfied Liens.[228]

Based on the applicable Sanction Guideline, the Principal Considerations, and the aggravating factors, for Murphy's violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010, the Hearing Panel imposes a $20,000 fine on Murphy and suspends him from associating in any capacity with any FINRA member firm for a period of six months. Because Murphy's violation was willful, he is subject to statutory disqualification.[229]

V. Order

The Hearing Panel orders that, for violating Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to timely amend his Form U4 to disclose three IRS Liens and four New York Warrants, and by willfully providing inaccurate information on his Form U4, Respondent Michael Patrick Murphy is fined $20,000 and suspended from associating with any FINRA member in any capacity for six months. Murphy shall pay the hearing costs of $8,541.44, consisting of a $750 administrative fee and $7,791.44 for the cost of the transcript. Because Murphy's violation was willful, he is subject to statutory disqualification.

If this Decision becomes FINRA's final disciplinary action, Murphy's suspension in any capacity shall become effective at the opening of business on July 20, 2020. The fine and costs

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[225] Guidelines at 8 (Principal Consideration No. 14: Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA that the conduct violated FINRA rules).

[226] *Holeman*, 2019 SEC LEXIS 1903, at *46.

[227] Guidelines at 8 (Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for his monetary or other gain).

[228] Tr. 151, 751, 768-69; CX-56, at 40.

[229] An associated person who willfully omits any material fact required to be disclosed in an application or report to FINRA is subject to statutory disqualification. Section 3(a)(39) of the 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; *McCune*, 2016 SEC LEXIS 1026, at *14. 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.

shall be due on a date set by FINRA, but not less than 30 days after this Decision becomes FINRA's final disciplinary action.[230]

Richard E. Simpson
Hearing Officer
For the Hearing Panel

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[230] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.