



A Broker's Guide to What Not to Do – FINRA's Monthly Disciplinary Report

*By James L. Komie**

Each month, FINRA publishes a summary of recent disciplinary actions taken against brokers and firms. It is something like a small-town newspaper police blotter for the industry. But instead of reading about a neighbor who was arrested for DUI, you learn that two brokers were disciplined last month for failing to update their Form U4s to reflect tax liens.

The monthly disciplinary report is worth reading for reasons other than prurient interest. It serves as a reminder for both industry professionals and attorneys of common compliance mistakes. It also shows what brings a modest fine or suspension and, more importantly, what can end a career.

Report Published Monthly on FINRA's Website

Posted on the 15th of each month, the report summarizes the disciplinary actions taken the prior month against firms and individuals. The report for March 2017 may be found at www.finra.org/sites/default/files/publication_file/March_2017_Disciplinary_Actions.pdf. FINRA also publishes a separate quarterly recap.

Most of the reported items involve Letters of Acceptance, Waiver and Consent, commonly known as AWCs. The AWCs are effectively settlements where the firm or individual does not admit or deny the allegations, but consents to the sanction and findings by FINRA that he or she engaged in the described conduct. The monthly report also describes new complaints filed by FINRA and decisions issued by hearing panels.

The items regarding firms often involve complex and esoteric issues of little interest except to compliance professionals. The reported items regarding individual registered representatives is where the monthly report gets interesting – and edifying.

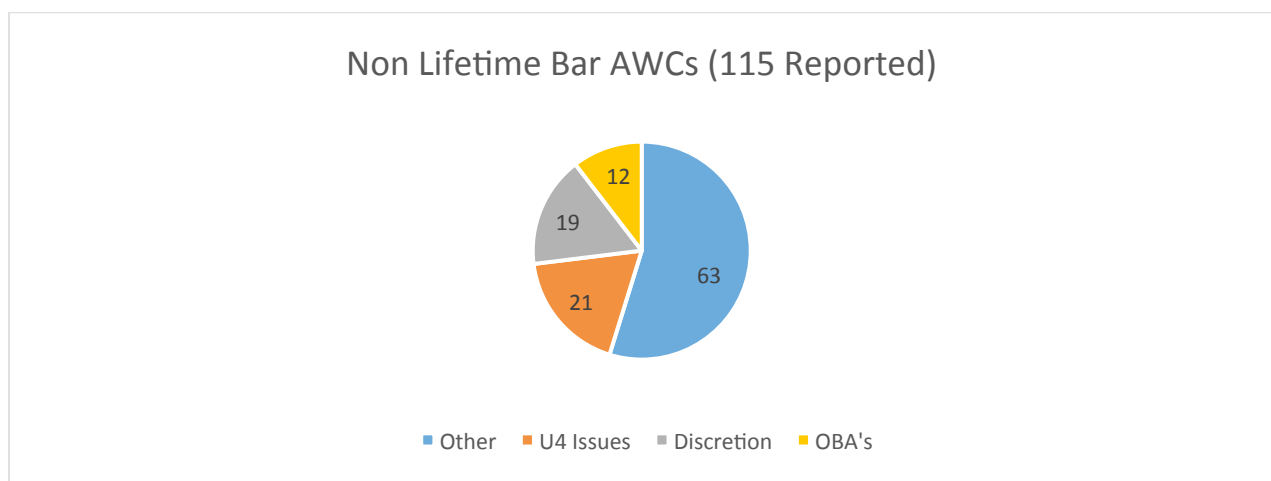
Highlights (or Lowlights?) from January to March 2017

A review of the monthly reports for January - March 2017 shows a wide range of misconduct and a wide range of discipline ranging from short suspensions to lifetime bars.

Common offenses include:

- Exercising improper discretion over a client's account, either time and price discretion or discretion with the client's knowledge and oral consent but without appropriate documentation or permission from the firm (19 items);
- Engaging in unapproved outside business activities (12 items);
- Failing to update Form U4 to reflect tax liens, bankruptcy filings, judgments or felonies (21 items).

The discipline in these matters typically involved a suspension and a fine, ranging from 5 days and \$5,000 to 6 months and \$50,000, depending on the seriousness of the violation.



Less common items – but still reported more than once – include:

- Acting on email requests for disbursement of funds where it turned out the email was from an imposter;
- Taking loans from clients who were not family members;
- Communicating by text or personal email with customers about their accounts;
- Impersonating a client to effectuate transactions for the convenience of the client or to obtain information for the client;
- Maintaining brokerage accounts at other firms;
- Using photocopies of client signatures or filling in forms for clients to effectuate transactions, again for the convenience of the client;
- Paying settlement money to clients in response to complaints without notifying the firm or updating Form U4.

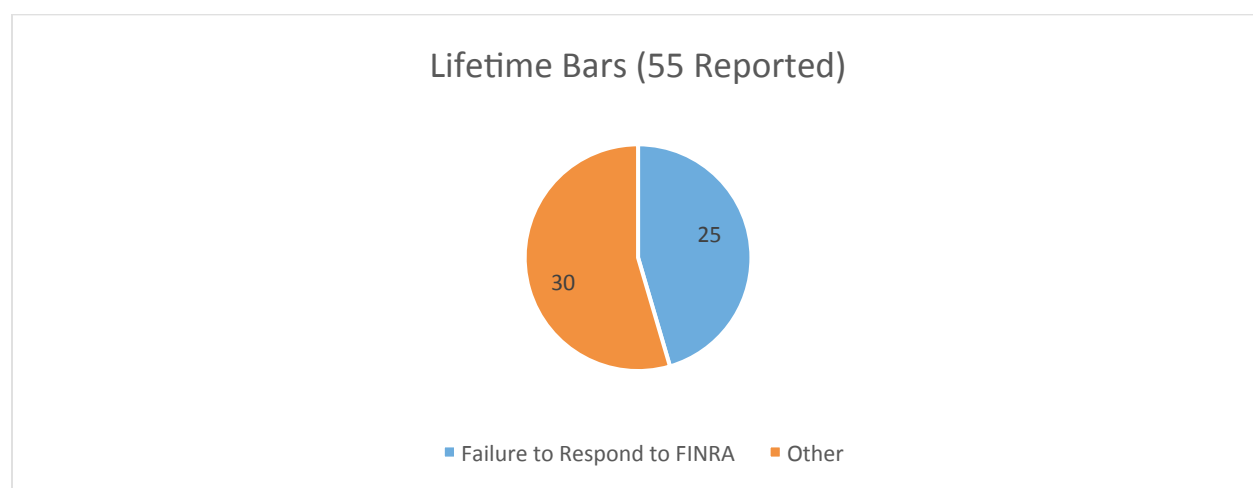
Again, the discipline ranged from small fines and suspensions to lengthy suspensions and large fines.

There also were some unusual items reported for 1Q 2017. One registered representative was suspended for 18 months because he brought improper study materials into the Series 7 exam (not an auspicious start to a career...). Another advisor was suspended for 6 months for, among other things, accepting \$33,500 in monetary gifts from a customer.

In general, it seems that the discipline was less severe if FINRA believed the registered representative was trying to act in the client's interest. On the other end of the spectrum, anything involving misconduct with elderly customers resulted in tougher discipline. Similarly, not being candid with the firm or FINRA in an investigation appeared to be an aggravating factor.

What Merits a Lifetime Bar?

The reports also include numerous lifetime bars. Almost half of the lifetime bars involved cases where the individual refused to cooperate in FINRA's investigation, either by failing to provide information or documents or refusing to appear for on-the-record testimony.



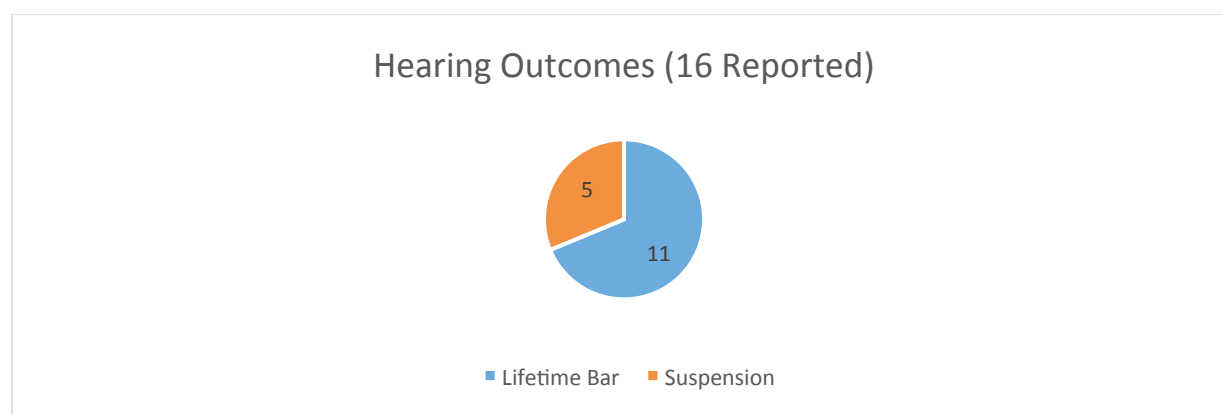
Misappropriation of client funds also resulted in lifetime bars.

Another type of misconduct that resulted in several lifetime bars was submission of false expense reimbursement requests to firms – for example, obtaining reimbursement for personal expenses by claiming they were business expenses. FINRA appears to view expense falsification as a form of theft.

Far More Settlements Than Hearings

The reports show that not many cases go all the way to a hearing. There were 159 AWCs or other settlements reported, but only 16 hearings.

Approximately two-thirds of the cases that went to hearing resulted in lifetime bars. Not surprisingly, those cases involved allegations of serious misconduct.



A Worthwhile Read for Industry Professionals & Attorneys

Cynics would say FINRA publishes the monthly summaries as a publicity tool either to stave off attacks from the left that it is too cozy with the industry or attacks from the right that it unnecessarily burdens the market with costly regulations. Those less cynical would say that FINRA wants the industry to know what it considers important and what its enforcement priorities are.

Whatever the purpose, the monthly summaries are worth a read. They are a chastening reminder of how a careless mistake can derail a career.

**[James L. Komie](#), of [Howard and Howard](#), concentrates his practice in civil litigation and counseling matters, with an emphasis on employment and trade secret/non-compete issues. He has significant experience representing financial services firms and their employees; advising companies on employee defection and general employment matters; representing clients before FINRA arbitration panels in cases involving employment, raiding, promissory notes and sales practice; and advising and representing financial services firms on regulatory and compliance issues. Mr. Komie is also a member of this publication's Board of Contributing Legal Editors.*