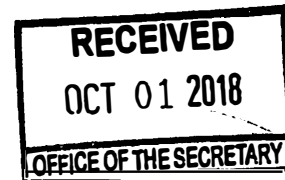


**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C  
IN THE MATTER OF FINRA'S NATIONAL ADJUDICATORY  
COUNCIL'S DECISION, PLAINTIFF  
vs.  
ALLEN HOLEMAN, RESPONDENT,  
COMPLAINT NO. 2014043001601,  
DATED MAY 21, 2018  
SEC ADMINISTRATIVE PROCEEDING  
FILE NO. 3-18546**

**RESPONDENT'S ANSWER TO FINRA'S BRIEF IN  
OPPOSITION TO THE APPELLANTS APPLICATION FOR  
REVIEW OF DISCIPLINARY ACTION TAKEN BY FINRA  
BEFORE THE SECURITIES AND EXCHANGE COMMISSION**

**September 28, 2018**



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2  
3 **BEFORE THE**  
4 **UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
5 **WASHINGTON, D.C.**

6 IN THE MATTER OF FINRA'S NATIONAL  
7 ADJUDICATORY COUNCIL'S DECISION,

8 PLAINTIFF

9 vs.

10 ALLEN HOLEMAN,  
11 SYOSSET, NY

SEC ADMINISTRATIVE PROCEEDING  
FILE NO. 3-18546

12 RESPONDENT

13 COMPLAINT NO. 2014043001601

14 DATED MAY 21, 2018  
15

16 RESPONDENT'S ANSWER TO FINRA'S BRIEF IN OPPOSITION TO THE APPELLANT'S  
17 APPLICATION FOR REVIEW OF DISCIPLINARY ACTION TAKEN BY FINRA

18  
19 **I. INTRODUCTION**

20 Allen Holeman ("Holeman") appeals to the SEC the May 21, 2018 Decision of the  
21 National Adjudicatory Council (the "NAC") seeking to vacate the NAC Hearing Panel's findings  
22 and sanctions including the fine, suspension, willful determination and associated costs.<sup>1</sup>  
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28 <sup>1</sup> See Respondent's Opening Brief in Support of the Application for Review of Disciplinary Action  
Taken by FINRA filed with the SEC August 15, 2018.

1           Holeman repeats and incorporates by reference the Principal Considerations, Arguments  
2 and Conclusion in Respondent’s Opening Brief in Support of the Application for Review of  
3 Disciplinary Action Taken by FINRA filed August 15, 2018 with the SEC.<sup>2</sup> The record does *not*  
4 (*emphasis added*) demonstrate that Holeman allegedly failed to timely amend his Form U4 to  
5 disclose three federal tax liens. The record does *not* (*emphasis added*) support the alleged finding  
6 that Holeman was on notice of the federal tax liens at or about the time of their filing in 2009.  
7  
8 Contrary to FINRA Enforcement’s (“Enforcement”) claim that the contention that “Holeman’s  
9 position ‘he’ never received notice, nor was ‘he’ aware of any of the three federal tax  
10 liens ...stands in direct conflict with a position Holeman held earlier in the investigative process  
11 that the Internal Revenue Service (“IRS”) informed him of the liens” is patently false and  
12 misleading. Holeman has held from the very beginning that the IRS had, at about that time, a  
13 discussion with him about engaging in an installment agreement and that the IRS *may* (*emphasis*  
14 *added*) file a lien and, when questioned about it, the IRS agent stated it would be against your  
15 property. There was no information that a lien was filed, would be filed or was going to be filed.  
16  
17 This is supported by the fact that the installment agreement Holeman had with the IRS did not  
18 indicate on its official form that a lien was filed or was to be filed. Holeman did *not* (*emphasis*  
19 *added*) make a conscious decision not to disclose those liens on Form U4 precisely because he  
20 was not aware or advised of any such filings would be done or had been done. It is indisputable  
21 that there is no evidence that Holeman was made aware of the liens in 2009 or thereafter and  
22 there is no evidence proffered that he received notice of the liens filed by the IRS. Upon inquiry  
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28           <sup>2</sup> *Id.* Pages 3-14

1 by FINRA District Staff telephonically by Mr. Michael Gerena, Examination Manager and  
2 Kathleen Halloran, Principal Examiner of FINRA's District Staff, raising questions about a  
3 number of items that they had received as reported by a vendor (identified as Lexis/Nexis)  
4 including certain IRS liens, Holeman denied knowledge of these items and some were proven to  
5 be false and inaccurate. In any event, Holeman did not admit nor state that he was on notice of or  
6 aware of any IRS liens filed. It should be noted that Mr. Gerena and Ms. Halloran are with the  
7 Long Island FINRA District Staff and not with "Enforcement" as Enforcement contends. In  
8 addition, the responses Holeman provided to FINRA's District Staff did not include any  
9 admission of receiving notice or being aware of any IRS liens being filed.  
10

11  
12       Holeman did immediately disclose to his employer, David Lerner Associates, Inc. ("DLA")  
13 the information relating to the IRS liens that FINRA District Staff had contacted him about but in  
14 conferring with private counsel, did not report the information on Form U4.<sup>3</sup> This action was not  
15 in lieu of Holeman's reporting obligations, but rather to meet the stated purpose of the standard  
16 of the Rule that Holeman's primary regulator and employer be promptly and fully informed of  
17 the facts relating to such disclosure. It was never Holeman's position that the liens are material  
18 as to him, but that since they were reported there was no issue as to materiality. There is no lying  
19 or misrepresentation as to the facts on this issue except as misstated and misapplied by  
20 Enforcement. As previously stated in the record, Holeman is not a licensed registered  
21 representative authorized to solicit clients or make investment recommendations as he does not  
22 hold State securities licenses. Holeman has no clients, no customers, has no contact with the  
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28 <sup>3</sup> See "Wexler Letter"

1 investing public, and is not compensated by any commission or fee arrangement. What  
2 Enforcement refers to as self-serving and dubious arguments by Holeman are *not (emphasis*  
3 *added)* in conflict with the evidence in the record and are factual and truthful. The true facts in  
4 this case have been ignored and given no weight.  
5

## 6 II. FORM U4 FILINGS

7 Holeman immediately sought the advice of an attorney upon the initial contact by  
8 FINRA's District Staff and after making the disclosure to DLA. The Form U4 filings submitted  
9 by Oppenheimer while Holeman was employed there were not shown to him and were not  
10 signed by him as Enforcement incorrectly states. Oppenheimer did not provide any copies of  
11 these Form U4s to Holeman and Enforcement did not produce copies of such Form U4s signed  
12 by Holeman as evidence because they do not exist bearing a signature, they are not signed or  
13 known to Holeman when they were filed by Oppenheimer. As previously stated in the record,  
14 these Oppenheimer filings were administrative and did not require the employee's signature or  
15 knowledge that they were being filed.<sup>4</sup> Holeman, on November 6, 2013, upon joining DLA,  
16 permitted his employer to conduct a background check and investigation which included credit  
17 reporting agencies. DLA did not report to Holeman any indication of any IRS liens that would  
18 need to be addressed. Holeman submitted two Form U4s, one on November 7, 2013 and one on  
19 September 15, 2014, prior to contact by FINRA and did not disclose any IRS tax liens because  
20 he was not aware and had not received notice from the IRS that any such liens had been filed. A  
21 Form U4 filing was submitted on December 14, 2014, without such disclosure because Holeman  
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28 <sup>4</sup> *Id. at Page 8*

1 was not in receipt of any IRS tax lien notice and was responding to FINRA’s inquiry on their  
2 request, see Holeman’s Response to Rule 8210 Request, dated December 17, 2014.<sup>5</sup> Holeman  
3 did file a Form U4 amendment reporting the IRS liens on April 8, 2015 after working with his  
4 private attorney and in-house counsel at DLA which had supported the position of not filing up  
5 to that date, evidenced by the email response to Mr. Gerena noted on Respondent’s Opening  
6 Brief dated August 15, 2018.<sup>6</sup> There were amendments to that filing due to inadvertent errors and  
7 to correctly indicate the date when Holeman saw for the first time copies of the IRS liens at the  
8 Monmouth County Clerk’s Office.  
9

### 10 **III. THE ANNUAL COMPLIANCE QUESTIONNAIRE**

11  
12 As described in Respondent’s Opening Brief filed with the SEC, the completed  
13 DLA questionnaire was reviewed and disclosed at that time with DLA Management in keeping  
14 with the position taken based on private counsel and with DLA Management that the response to  
15 the relevant questions was “no.”<sup>7</sup> Consequently, the information relating to the IRS liens had  
16 been provided to DLA and as such the questionnaire’s completion was not in violation of FINRA  
17 Rule 2010. Specifically, Holeman did not fail to disclose information to his firm and did not  
18 violate FINRA Rule 2010.  
19

### 20 **IV. ENFORCEMENT’S INACURATE AND MISLEADING STATEMENTS**

21 It is Enforcement that is disingenuous in their characterization of Holeman’s arguments  
22 and explanations labeling them as tortured and shocking and attacking his position as CCO  
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26 <sup>5</sup> See *Certified Record Index –CX-24*

27 <sup>6</sup> *Id.* Page 6

28 <sup>7</sup> *Respondent’s Opening Brief in Support of the Application for Review of Disciplinary Action Taken by FINRA filed with the SEC August 15, 2018, Page 11.*



1 impugning his outstanding record in the financial services industry including his tenure as a five  
2 year member of the Chicago Board Options Exchange Business Conduct Committee and as  
3 President of the Compliance and Legal Division of SIFMA (f/k/a Securities Industry  
4 Association). Holeman has worked with many senior officials of regulatory bodies, and has  
5 never had his integrity and honesty challenged or questioned. It is inappropriate and unbecoming  
6 a lawyer and a FINRA Enforcement officer to describe an argument or defensive position taken  
7 by the Respondent as “comically” and points to their attempt to discredit Holeman.<sup>8</sup> There is  
8 nothing comical concerning this matter and its very serious potential consequences.  
9

10 Enforcement presented evidence about the IRS being required to notify taxpayers within five  
11 business days after a federal tax lien is filed and based their argument on a study that sampled  
12 125 taxpayers out of approximately 948,000 lien notices sent by the IRS.<sup>9</sup> Enforcement and the  
13 NAC also cited the “mailbox rule” but has no evidence that Holeman had, in fact, received any  
14 lien notices from the IRS. The references to Holeman’s statements regarding the IRS liens are  
15 purposely taken out of context by Enforcement and at no time do any of those statements by  
16 Holeman refer to the IRS liens having been received or being aware that they had been filed or  
17 would be filed. The fact that Holeman was advised that any IRS liens that may be filed would be  
18 against property and repeated that understanding in his responses to FINRA, does not equate that  
19 Holeman had received any IRS tax lien notices or that he was aware of their filing. Holeman did  
20 not allow the IRS to provide to Enforcement documentation of certified mailing to him. He did  
21 so himself on the advice of counsel as such permission to Enforcement was not considered  
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27 <sup>8</sup> FINRA’s Opposition to Application for Review, dated September 17, 2018, Page 9, footnote 3  
28 <sup>9</sup> Hearing Transcript, dated January 19, 2017 (Bates 000197) Pages 129-131.

1 required. Holeman received a response from the IRS and provided it to his attorney.<sup>10</sup>  
2 Enforcement again refers to Holeman’s December 2014 letter stating “where he appeared to  
3 acknowledge existence of the liens...” which is not true or correct.<sup>11</sup> Moreover, Enforcement  
4 continues to state that “questions had been raised...” but provided no evidence and no copies of  
5 the very liens that they were referring to.<sup>12</sup> In Au, a former IRS attorney is quoted as follows:  
6 “When the attorney asked about the Notice sent to Au, the IRS contact told her that it (the IRS)  
7 does not retain copies of these notices.”<sup>13</sup> Au insisted that he never received the Notice and  
8 because he did not know the IRS filed the lien, he did not commit a willful violation by failing to  
9 amend his Form U4 to disclose the lien; the Hearing Panel’s decision dismissed the complaint by  
10 Enforcement.<sup>14</sup> Enforcement repeatedly cites Holeman’s long standing employment in the  
11 financial services industry particularly as a Chief Compliance Officer in a derogatory manner  
12 seeking to imply a level of knowledge and experience that would reside with a person in this  
13 position. This matter does not rest on the long experience of the Respondent and has no  
14 connection to that experience.  
15  
16  
17

## 18 V. ARGUMENTS

19 Enforcement would have Holeman’s defenses and arguments dismissed without merit or  
20 consideration and they should not be. Enforcement repeats its faulty position based on no  
21 evidence and inconclusive arguments. Please see Respondent’s Opening Brief filed with the  
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25 <sup>10</sup> *Id.* Pages 208,209.

26 <sup>11</sup> *FINRA’s Opposition to Application for Review, dated September 17, 2018, Page 9.*

27 <sup>12</sup> *Id.* Page 9, 10.

28 <sup>13</sup> *In re: Au Hearing Panel decision – Department of Enforcement vs. Vincent Au – December 12, 2016 – Disciplinary Proceeding No. 2013036653301*

<sup>14</sup> *Id.*

1 SEC, dated August 15, 2018, that lists at pages 11 through 13 which details the NAC's wrongful  
2 conclusions.<sup>15</sup> It is clear that Holeman relied on private counsel from the beginning of this  
3 inquiry and used the language provided by his private attorney in the language used in the initial  
4 Form U4 filing as described in the Wexler Letter. <sup>16</sup> In addition, it is clear that Holeman made  
5 full disclosure to his firm as is evidenced by the email from the General Counsel to FINRA  
6 which the NAC and Enforcement seek to disallow.<sup>17</sup> And, the Wexler Letter also shows that  
7 Holeman sought to obtain advice on the matter from the start of this inquiry. Moreover,  
8 Enforcement wishes to discount affidavits by DLA's General Counsel and President that  
9 acknowledges they were informed about the IRS liens by Holeman and did not require Holeman  
10 to file a Form U4 amendment to report information on the IRS liens. They represent an important  
11 part of Holeman's defense and should be given proper weight.<sup>18</sup> With respect to the Form U4  
12 filings by Oppenheimer, Enforcement's position makes no sense since Holeman was not aware  
13 of their filings and therefore could not "make sure the form is accurate." And, there is no ample,  
14 contrary evidence that supports Enforcement's position. There was no signature affixed to those  
15 filings and no acknowledgment or consent to their filing by Holeman. FINRA District Staff did  
16 not provide copies of the liens as filed even though their witness stated that she "spoke with an  
17 investigator who went to the Monmouth County."<sup>19</sup> Implying that there was a visit by FINRA  
18 District Staff  
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25 <sup>15</sup> Respondent's Opening Brief in Support of the Application for Review of Disciplinary Action  
Taken by FINRA filed with the SEC August 15, 2018, Pages 11-13.

26 <sup>16</sup> see Wexler Letter

27 <sup>17</sup> Respondent's Opening Brief in Support of the Application for Review of Disciplinary Action  
Taken by FINRA filed with the SEC August 15, 2018, Page 6.

28 <sup>18</sup> Id. Page 10

<sup>19</sup> Hearing Transcript, dated January 19, 2017 (Bates 000197) Pages 77, 78

1 to the Monmouth County Clerk's office and they did not obtain a copy of the liens that had  
2 been filed there. FINRA District staff 's initially sent Holeman a chart listing sketchy  
3 information about a number of items that included the IRS liens and other information that were  
4 proven to be false. Holeman is pro se and does not have the army of lawyers and paralegals that  
5 comprise Enforcement's staff to provide all of the citations and relevant decisions in this matter,  
6 but that situation should not serve to undermine the arguments that have and are being made as  
7 reflected in the record. Holeman's actions were not willful as he made the disclosures to his  
8 employer and relied on the advice of counsel especially in connection question 14M in the Form  
9 U4. The NAC's sanctions are oppressive, excessive and not in keeping with the FINRA's  
10 Sanctions Guidelines. In light of the mitigating circumstances involving this matter, the reliance  
11 on the advice of private counsel and disclosure made to Holeman's employer, among other  
12 reasons such as no harm to the investing public and no aggravating factors, the NAC's actions  
13 are wholly inappropriate. Enforcement also seeks a denial of Holeman's request for oral  
14 arguments inexcusably, stating "because the issues have been thoroughly briefed and can be  
15 adequately determined on the basis of the record."<sup>20</sup> Precisely because Holeman has challenged  
16 the misstatements and inaccurate representations by Enforcement concerning the record and  
17 because the decisional process would be significantly enhanced by personal appearance to  
18 observe credibility, demeanor, character and veracity, oral arguments are respectfully requested  
19 and should be granted.  
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27 <sup>20</sup>FINRA's Opposition to Application for Review, dated September 17, 2018, Page 19, footnote 6  
28



**CERTIFICATE OF SERVICE**

I hereby certify that, on September 28, 2018, I caused an original and copies of the foregoing:

“Respondent’s Answer to FINRA’s Brief in Opposition to the Appellant’s Application for Review of Disciplinary Action Taken by FINRA

SEC Administrative Proceeding No. 3-18546-

ADJUDICATORY COUNCIL’S DECISION, Plaintiff vs. ALLEN HOLEMAN, Defendant”

be sent by FedEx Express Mail and U.S. Postal Service mail addressed as follows:

An original and three copies to:

Brent J. Fields, Secretary

The Office of the Secretary

Securities and Exchange Commission

100 F Street, NE

Room 10915

Washington, D.C. 20549-1090

And a copy to:

FINRA

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