

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL BANJANY
(CRD No. 5917243),

Respondent.

Disciplinary Proceeding
No. 2015048317802

Hearing Officer–LOM

DEFAULT DECISION

July 18, 2017

Respondent is barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010. He failed three times to appear for on-the-record testimony requested pursuant to Rule 8210, and he failed to respond timely and completely to two Rule 8210 requests for information and documents.

Appearances

For the Complainant: Emily D. Barnes, Esq. and Lane Thurgood, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

FINRA’s Department of Enforcement (“Enforcement”) brought this disciplinary proceeding against Michael Banjany (“Banjany”) on March 6, 2017. The Complaint alleges that between June and December 2016 Banjany violated FINRA Rules 8210 and 2010 by failing three times to appear for on-the-record testimony requested pursuant to FINRA Rule 8210 and, in addition, by failing to respond timely and completely to two Rule 8210 requests for documents. To date, Banjany has not answered the Complaint.

On May 12, 2017, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Motion”). The Motion is accompanied by Enforcement’s memorandum of law in

support (“Memorandum”), and the Declaration of Emily D. Barnes (“Barnes Decl.”), accompanied by exhibits.¹ Banjany has not responded to the Motion.

For the reasons set forth below, I find Banjany in default and **GRANT** Enforcement’s Motion.

II. Findings of Fact and Conclusions of Law

A. Banjany’s Background

Banjany first became employed by a FINRA member firm on April 25, 2011. His registration was approved on October 31, 2011. He subsequently associated with three member firms before becoming associated with J.P. Morgan Securities LLC (“J.P. Morgan” or “Chase”) on June 29, 2015. On December 21, 2015, J.P. Morgan filed a Form U5 reporting that Banjany had been terminated and stating that Banjany “deposited checks from an outside financial institution to his personal Chase account without sufficient funds available.” After J.P. Morgan terminated him, Banjany associated with another FINRA member firm, National Securities Corporation (“National Securities”), from June 8, 2016. His employment ended on July 6, 2016, and his registration ended on July 13, 2016. He has not been associated with any FINRA member firm since that time.²

B. Jurisdiction

FINRA has jurisdiction over Banjany pursuant to Article V, Section 4(a) of FINRA’s By-Laws. That provision of the By-Laws provides that FINRA retains jurisdiction over a person for two years after the effective date of the termination of the person’s registration with FINRA. That retained jurisdiction applies in two circumstances: (i) to authorize the filing a complaint regarding misconduct that commenced prior to termination, and (ii) to require the formerly associated person to provide information requested by FINRA pursuant to its rules.

Enforcement filed its Complaint in March 2017, well within the two-year period of retained jurisdiction, which followed after National Securities terminated his association with it in early July 2016. The Complaint charges that Banjany failed to provide information requested pursuant to FINRA Rule 8210 from June through December 2016. His misconduct is covered by both prongs of retained jurisdiction. First, the Complaint was filed to commence this proceeding prior to his termination by National Securities. Second, the Complaint involves requests for information pursuant to FINRA Rules that were made within six months of his termination, and Banjany was required to comply with for two years after his registration through National Securities terminated.

¹ Citations to Enforcement’s exhibits are noted as “CX-___.”

² Complaint (“Compl.”) ¶¶2-5; CX-1.

C. Banjany Defaulted by Failing To Answer the Complaint

Enforcement served Banjany with copies of the Complaint and Notice of Complaint on March 6, 2017, and the Complaint and Second Notice of Complaint on April 4, 2017. As required by FINRA Rules 9131 and 9134, both times Enforcement served the Complaint and notice by first-class certified mail to Banjany's current residential address as reflected in the Central Registration Depository ("CRD Address"). Banjany did not file an Answer despite being properly served.³ Consequently, Banjany is in default.

D. Origin of the Investigation

Subsequent to J.P. Morgan's filing of the December 21, 2015 Form U5, FINRA staff commenced an investigation into the circumstances of Banjany's termination from J.P. Morgan.⁴

E. Banjany Has Failed To Comply With FINRA Rule 8210

FINRA Rule 8210 requires an associated person to provide information orally or in writing with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. "FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain information concerning an associated person's securities-related business ventures."⁵ Moreover, "[a]ssociated persons therefore must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material."⁶

Banjany has demonstrated flagrant disregard for his obligations under Rule 8210. Three times Enforcement requested that Banjany appear for on-the-record testimony pursuant to Rule 8210, and three times he failed to appear. In connection with these testimonial requests, the staff also sent Banjany two letters requesting that he provide certain information and documents

³ Barnes Decl. ¶¶ 9-11, 16, 17, 21. On March 8, 2017, Enforcement received certified mail receipts indicating that the Complaint and Notice of Complaint sent to the CRD Address were delivered. Banjany also acknowledged actual receipt of the Complaint and Notice of Complaint by replying to an email sent to him by Enforcement counsel that attached the Complaint and Notice of Complaint. Barnes Decl. ¶ 12 and n.4. Banjany acknowledged receiving correspondence from FINRA as early as April 2016. He indicated that he had received the certified mail from FINRA with the Complaint and Notice "regarding this frivolous, ridiculous, irrelevant and non-important matter." He generally expressed his anger at "being bothered with this ridiculous nonsense" and his opinion that FINRA is a "fraudulent corrupt organization." He called Enforcement staff "cold hearted scums of the earth." Enforcement staff twice advised Banjany to follow the instructions in the Notice if he wished to file an Answer. Enforcement received no further communications from Banjany. Barnes Decl. at n.4; CX-4. To date, Banjany has filed nothing with the Office of Hearing Officers.

⁴ Compl. ¶ 6.

⁵ *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

⁶ *Id.* at *13 (citing *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009)).

pursuant to Rule 8210. To date, Banjany has provided some but not all of the documents requested.

1. First Testimonial Request and First Document Request

On June 7, 2016, Enforcement staff sent Banjany a letter (“First Testimony Request”) by certified and first-class mail addressed to his CRD Address, requesting that he appear for on-the-record testimony pursuant to FINRA Rule 8210 on June 30, 2016. The staff also sent the First Testimony Request by electronic mail. On June 15, 2016, in the same manner, Enforcement sent Banjany a letter (“First Document Request”) pursuant to Rule 8210 requesting that he provide certain information and documents. Without explanation, he failed to appear for testimony or provide any information or documents.⁷

2. Second Testimonial Request and Second Document Request

On July 7, 2016, in the same manner as before, Enforcement staff sent Banjany a letter (“Second Testimony Request”) again requesting that he appear for on-the-record testimony pursuant to FINRA Rule 8210. The Second Testimony Request referenced his previous failure to appear for testimony. On the same day, Enforcement staff sent Banjany a separate letter (“Second Document Request”) requesting again that he provide the information and documents previously requested pursuant to Rule 8210. Without explanation, he failed to appear for testimony or provide any information or documents.⁸

3. Suspension Proceeding

As a result of Banjany’s repeated failures to comply with Rule 8210, Enforcement staff initiated a FINRA Rule 9552 proceeding against Banjany. On July 27, 2016, pursuant to Rule 9552, Enforcement staff sent Banjany a Notice of Suspension that stated he would be suspended from associating with any FINRA member firm in any capacity unless he took corrective action prior to the suspension date of August 22, 2016. The notice further stated that if he failed to request termination of the suspension by October 31, 2016, then he would be automatically barred. Banjany did not respond and was suspended.⁹

In mid-October 2016, shortly before he would have been automatically barred, Banjany contacted Enforcement to indicate his willingness to comply with the pending Rule 8210 requests. On October 20, 2016, he provided some of the documents requested, but not all.¹⁰

⁷ Compl. ¶¶ 7-11.

⁸ Compl. ¶¶ 12-16.

⁹ Compl. ¶¶ 17-20.

¹⁰ Compl. ¶¶ 21-22.

4. Third Testimonial Request

On October 21, 2016, Enforcement staff sent Banjany a third letter requesting that he appear for on-the-record testimony pursuant to FINRA Rule 8210. On October 24, 2016, Banjany represented in telephone conversations with the staff that he would appear and would produce all responsive documents requested. Consequently, the staff terminated the suspension imposed by the FINRA Rule 9552 proceeding against Banjany. However, without explanation, Banjany failed to appear for testimony on December 13, 2016.¹¹

By his failure three times to appear for on-the-record testimony, and by his untimely and partial production of documents, Banjany violated FINRA Rules 8210 and 2010.¹²

III. Sanctions

FINRA must rely upon Rule 8210 “to police the activities of its members and associated persons” because it lacks subpoena power.¹³ “[A member’s] failure to respond to [FINRA’s] information requests frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.”¹⁴ Because compliance with the Rule is necessary for FINRA to carry out its regulatory functions, FINRA’s Sanction Guidelines (“Guidelines”) recommend that, if an individual did not respond in any manner, a bar in all capacities should be standard. Even if a respondent responds, if he or she only does so after FINRA files a complaint, the adjudicators should apply the presumption that the failure constitutes a complete failure to respond.¹⁵

Banjany failed to respond in any manner to the First, Second, and Third Testimonial Requests. He provided a partial response to the First and Second Document Requests, but only after FINRA staff initiated the suspension proceeding. His multiple failures to provide testimony were complete failures to respond—which justify a bar. His failure to comply with the First and Second Document Requests until the initiation of the suspension proceeding should be treated as the equivalent of failing to respond until the filing of a complaint, which is presumptively a complete failure to respond—and justifies a bar.

Moreover, there are aggravating factors. Banjany engaged in numerous acts and a pattern of misconduct, failing to respond to multiple Rule 8210 requests.¹⁶ Rather than assisting FINRA

¹¹ Compl. ¶¶ 23-25.

¹² A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also violates FINRA Rule 2010. *See, e.g., CMG Inst. Trading*, 2009 SEC LEXIS 215, at *30 n.36.

¹³ *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998).

¹⁴ *PAZ Sec.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009).

¹⁵ FINRA Sanction Guidelines (“Guidelines”) at 33 (2017), <http://www.finra.org/industry/sanction-guidelines>.

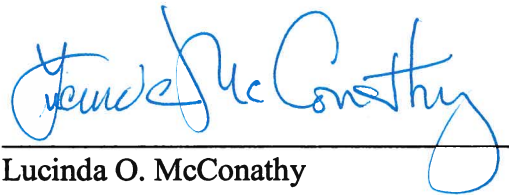
¹⁶ Guidelines at 7, Principal Consideration 8.

in its investigation, he impeded its efforts and wasted its time and resources.¹⁷ A high degree of regulatory pressure was required to obtain even a partial, untimely response to the First and Second Document Requests.¹⁸ Banjany's misconduct was deliberate and intentional, particularly in connection with the Third Testimonial Request. He apparently falsely promised to appear in response to the Third Testimonial Request in order to persuade the staff to terminate the suspension imposed on him in the FINRA Rule 9552 proceeding.¹⁹ Banjany failed to comply with the Third Testimonial Request despite have been warned by FINRA staff that the conduct violated FINRA Rules.²⁰ Banjany does not acknowledge his misconduct and has no remorse or contrition for it. He contends that Enforcement staff must explain the investigation to him before he will comply.²¹

I find no mitigating factors.

IV. Order

Banjany is barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Lucinda O. McConathy
Hearing Officer

¹⁷ Guidelines at 8, Principal Consideration 12. Banjany's misconduct in connection with the Third Testimonial Request was particularly egregious in this regard. Enforcement staff scheduled the date, time and location for the testimony in consultation with Banjany. Enforcement staff based in Rockville agreed to travel to New York for Banjany's convenience. When he nevertheless failed to appear at the appointed time, the staff waited two hours, checked all voicemail and email addresses Banjany might have attempted to contact, and consulted with building security staff. Banjany did not contact the staff to explain his failure to appear either on that day or at any time prior to the filing of the Complaint charging him with violating FINRA Rules 8210 and 2010. Barnes Decl. ¶23, n.8.

¹⁸ Guidelines at 33, Principal Consideration 2 in connection with providing a partial or untimely response.

¹⁹ Guidelines at 8, Principal Consideration 13.

²⁰ Guidelines at 8, Principal Consideration 14; Barnes Decl. ¶ 23 and n.8.

²¹ Guidelines at 7, Principal Consideration 2. In response to his suspension, in September 2016 Banjany contended that he had not responded to the Rule 8210 request because he had not been given sufficient information about the investigation. He repeated that claim in an October 2016 telephone call with the staff, where he said that he had received all the Rule 8210 requests but had chosen not to respond to them or appear for testimony. He said that in his view he had not been provided with an adequate explanation of the investigation. Barnes Decl. at ¶ 23, n.9; CX-6.

Copies to:

Michael Banjany (via email and first-class mail)

Emily D. Barnes, Esq. (via email and first-class mail)

Lane Thurgood, Esq. (via email)

Jeffrey D. Pariser, Esq. (via email)