

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SHAKELA CARTER
(CRD No. 4321231),

Respondent.

Disciplinary Proceeding
No. 20160492021-01

Hearing Officer – CC

DEFAULT DECISION

July 2, 2018

Respondent refused to appear for on-the-record testimony after several requests by the Department of Enforcement, in violation of FINRA Rules 8210 and 2010. For these violations, Respondent is barred from associating with any member firm in any capacity.

Appearances

For Complainant: Daniel M. Hibshoosh, Esq., Eric Hansen, Esq., Richard Chin, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority.

For Respondent: No appearance by or on behalf of Respondent Shakela Carter.

I. Introduction

Shakela Carter (“Carter”) failed to appear for scheduled on-the-record testimony, after several requests by FINRA’s Department of Enforcement (“Enforcement”). Enforcement properly served Carter with two Notices of the Complaint and the Complaint, and Carter failed to respond. In light of Carter’s failure to respond, I deem the allegations of the Complaint admitted, find that Carter violated FINRA Rules 8210 and 2010, and bar Carter from associating with any member firm, in any capacity.

On January 31, 2018, Enforcement filed the Complaint with FINRA’s Office of Hearing Officers. The Complaint alleges in one cause of action that, between November 27, 2017, and January 4, 2018, Enforcement properly served Carter with several requests pursuant to FINRA Rule 8210 to appear for on-the-record testimony, and Carter either refused by email to appear or did not appear as requested. The Complaint alleges that Carter’s conduct violated FINRA Rules 8210 and 2010.

Enforcement served Carter with the Complaint in accordance with FINRA’s Code of Procedure. Carter failed to file an Answer or otherwise respond to the Complaint. Accordingly, on April 30, 2018, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), together with the Declaration of Daniel M. Hibshoosh (“Hibshoosh Decl.”) in support of the Default Motion and 19 supporting exhibits.¹ Carter did not respond to the Default Motion.

II. Findings of Fact and Conclusions of Law

A. Carter’s Background

Carter entered the securities industry in December 2000.² Most recently, Carter was associated with Merrill Lynch, Pierce, Fenner & Smith (“Merrill Lynch”) and registered as a general securities representative.³ The Central Registration Depository (“CRD”) reports that Carter resigned from Merrill Lynch on February 8, 2016.⁴ Carter is not currently associated with a member firm.⁵

B. FINRA’s Jurisdiction

FINRA has jurisdiction to pursue this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA’s By-Laws, because: (1) Enforcement filed the Complaint on January 31, 2018, which is within two years of Carter’s termination from Merrill Lynch on February 8, 2016 and Merrill Lynch’s filing of an Amended Form U5 Uniform Termination Notice for Securities Industry Registration (“Form U5”) on March 9, 2016; and (2) the Complaint alleges that Carter failed to appear to testify pursuant to FINRA Rule 8210 during the two-year period of FINRA’s continuing jurisdiction.⁶

C. Origin of the Proceeding

On February 9, 2016, Merrill Lynch filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) indicating that Carter voluntarily resigned effective February 8, 2016.⁷ On March 9, 2016, Merrill Lynch filed an Amended Form U5 stating that at the time of Carter’s resignation, she had been under internal review for fraud, wrongful taking of property, or violating investment-related statutes, regulations, rules or industry standards of conduct. The Amended Form U5 also stated that Merrill Lynch’s internal review involved Carter’s alleged participation in “clients’ outside business activities.”⁸ On April 22, 2016, Merrill Lynch filed

¹ In this Decision, I identify Enforcement’s exhibits as CX-1 through CX-19.

² Hibshoosh Decl. ¶ 4; CX-1.

³ CX-1.

⁴ Hibshoosh Decl. ¶ 4; CX-1.

⁵ Hibshoosh Decl. ¶ 7; CX-1.

⁶ Article V, Sec. 4, FINRA By-Laws; Hibshoosh Decl. ¶ 8.

⁷ Hibshoosh Decl. ¶ 4; CX-1.

⁸ Hibshoosh Decl. ¶ 5; CX-2.

another Amended Form U5 stating that it had concluded its investigation of Carter on March 24, 2016, and it found that Carter facilitated a “client’s outside investment arrangement via the preparation of due diligence on same” and assisted “a client with an outside credit arrangement.”⁹

In June 2016, FINRA commenced an investigation into Carter’s conduct based on Merrill Lynch’s disclosures in Carter’s Amended Form U5.¹⁰

D. Carter’s Default

When Enforcement filed the Complaint on January 31, 2018, Carter’s residential address as reflected in the CRD was an address in Lauderdale Lakes, Florida (the “CRD Address”).¹¹

On January 31, 2018, Enforcement served Carter at the CRD Address with the Notice of Complaint and the Complaint by certified mail and sent copies to the CRD Address by first-class mail.¹² Carter’s Answer to the First Notice of Complaint was due on or before February 28, 2018.¹³ Carter failed to answer or otherwise respond to the Complaint.¹⁴

On March 8, 2018, Enforcement served Carter at the CRD Address with the Second Notice of Complaint and the Complaint by certified mail and sent copies to the CRD Address by first-class mail.¹⁵ Carter’s Answer to the Second Notice of Complaint was due on or before March 26, 2018.¹⁶ Carter failed to answer or otherwise respond to the Second Notice of Complaint.¹⁷

FINRA Rule 9134 provides for service of a complaint on a natural person by certified mail to the person’s residential address as indicated in the CRD. Rule 9134(b)(1) states that, if the party responsible for serving the complaint has actual knowledge that the CRD Address is out of date, the serving party shall send duplicate copies to the last known address and business address indicated in the CRD. Here, the CRD indicates that Carter left the securities industry on

⁹ Hibshoosh Decl. ¶ 6; CX-3.

¹⁰ Complaint (“Compl.”) ¶ 11.

¹¹ Hibshoosh Decl. ¶ 13; CX-3; CX-16.

¹² Hibshoosh Decl. ¶ 13; CX-16. The United States Postal Service (“USPS”) reported that it left notice of the certified mailing at the CRD Address on February 9, 2018, and it did not return the first-class mailing to Enforcement as undeliverable. Hibshoosh Decl. ¶ 14; CX-17.

¹³ Hibshoosh Decl. ¶ 15; CX-16.

¹⁴ Hibshoosh Decl. ¶ 15.

¹⁵ Hibshoosh Decl. ¶ 16; CX-18. The USPS reported that it left notice of the certified mailing at the CRD Address on March 14, 2018, and it did not return the first-class mailing to Enforcement as undeliverable. Hibshoosh Decl. ¶ 18; CX-19.

¹⁶ Hibshoosh Decl. ¶ 19; CX-18.

¹⁷ Hibshoosh Decl. ¶ 19.

February 8, 2016 and has not been associated with a member firm since.¹⁸ Therefore, the CRD did not include a current business address for Carter. The record is devoid of evidence that Enforcement was aware of another address for Carter. I find that Enforcement properly served Carter with the First and Second Notices of the Complaint and the Complaint and that Carter failed to file an Answer to the Complaint. Pursuant to FINRA Rules 9215(f) and 9269(a), I find Carter in default and deem admitted all allegations of the Complaint.¹⁹

E. Carter Failed to Appear for On-the-Record Testimony

On November 27, 2017, Enforcement sent Carter, by certified and first-class mail, a written request for her to appear pursuant to FINRA Rule 8210 for on-the-record testimony on December 20, 2017.²⁰ Enforcement mailed the request to the CRD Address and sent a copy to an email address Carter had previously used to correspond with FINRA staff.²¹ On November 29, 2017, Carter responded to Enforcement's email stating she was "no longer interested in working in this industry and [would] not be testifying."²²

On December 14, 2017, Enforcement sent Carter, by certified and first-class mail, a second written request for her to appear pursuant to FINRA Rule 8210 for on-the-record testimony on December 20, 2017.²³ Enforcement mailed the request to the CRD Address and sent a copy to the email address Carter had previously used to correspond with FINRA staff.²⁴

On December 20, 2017, Carter failed to appear and provide testimony as requested in the November 27, 2017, and December 14, 2017 requests.²⁵

Also on December 20, 2017, Enforcement sent Carter, by certified and first-class mail, a written request for her to appear pursuant to FINRA Rule 8210 for on-the-record testimony on

¹⁸ Hibshoosh Decl. ¶¶ 7-8, CX-1.

¹⁹ See *Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *21 (NAC July 26, 2012) (finding constructive notice of a complaint served on a respondent by regular first-class and certified mail at his last known residential address, as indicated in the CRD); FINRA Rule 9269(a)(2) ("If the defaulting party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted.").

²⁰ Hibshoosh Decl. ¶ 11(a); Compl. ¶ 12; CX-4; CX-5.

²¹ Hibshoosh Decl. ¶ 11(a); Compl. ¶ 12; CX-5. The USPS reported that it left notice of the certified mailing at the CRD Address on December 6, 2017, and it did not return the first-class mailing to Enforcement as undeliverable. Hibshoosh Decl. ¶ 11(a); CX-6.

²² Hibshoosh Decl. ¶ 11(b); Compl. ¶ 13; CX-7.

²³ Hibshoosh Decl. ¶ 11(c); Compl. ¶ 14; CX-8; CX-9.

²⁴ Hibshoosh Decl. ¶ 11(c); Compl. ¶ 14; CX-9. The USPS reported that it left notice of the certified mailing at the CRD Address on December 22, 2017, and it did not return the first-class mailing to Enforcement as undeliverable. Hibshoosh Decl. ¶ 11(c); CX-10.

²⁵ Hibshoosh Decl. ¶ 11(d); Compl. ¶ 15; CX-11. On December 20, 2017, Hibshoosh attempted to contact Carter by telephone, and Carter did not answer or return the call. Hibshoosh Decl. ¶ 11(d); CX-11.

January 4, 2018.²⁶ Enforcement mailed the request to the CRD Address and sent a copy to the email address Carter had previously used to correspond with FINRA staff.²⁷

On January 4, 2018, Carter failed to appear and provide testimony as requested in Enforcement's December 20, 2017 request.²⁸

As of Enforcement's filing of the Complaint, Carter had not appeared and provided testimony as requested.²⁹

F. Discussion

FINRA Rule 8210(a) states that FINRA staff shall have the right to require a person subject to FINRA's jurisdiction to provide information orally.³⁰ FINRA Rule 8210(c) states that no member or associated person shall fail to provide information or testimony. Notice of a request for information or testimony under Rule 8210 shall be deemed received if Enforcement mailed the notice to the recipient's last known residential address as reflected in the CRD.³¹ Accordingly, I find that Enforcement properly served Carter with three requests for her appearance to provide on-the-record testimony. I also find that Carter violated FINRA Rule 8210 by refusing to testify and failing to appear.³² Furthermore, a violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore violates FINRA Rule 2010.³³

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") advise that, if an individual did not respond in any manner to a Rule 8210 request for information or testimony, a bar in all capacities is

²⁶ Hibshoosh Decl. ¶ 11(e); Compl. ¶ 16; CX-12.

²⁷ Hibshoosh Decl. ¶ 11(e); Compl. ¶ 16; CX-12; CX-13. The USPS reported that it left notice of the certified mailing at the CRD Address on January 11, 2018, and it did not return the first-class mailing to Enforcement as undeliverable. Hibshoosh Decl. ¶ 11(e); CX-14.

²⁸ Hibshoosh Decl. ¶ 11(f); Compl. ¶ 17; CX-15. On January 4, 2018, Hibshoosh attempted to contact Carter by telephone, and Carter did not answer or return the call. Hibshoosh Decl. ¶ 11(f); CX-15.

²⁹ Compl. ¶ 18.

³⁰ Pursuant to Article V, Section 5 of FINRA's By-Laws, a person whose association with a member firm has been terminated shall continue to be subject to FINRA's jurisdiction for two years after the effective date of termination.

³¹ See FINRA Rule 8210(d).

³² See *Moore*, 2012 FINRA Discip. LEXIS 45, at *20, *27 (finding that Enforcement properly served a respondent with a FINRA Rule 8210 request by mailing the request to his CRD address).

³³ See *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *9-14 (Sept. 10, 2010) (finding violation of FINRA Rules 8210 and 2010 for failing to respond to several requests for information); *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15-30 (Jan. 30, 2009) (finding violation of FINRA Rules 8210 and 2010 for failing to respond completely and timely to a request for information).

standard.³⁴ For failing to appear for on-the-record testimony, I bar Carter from associating with any member firm in any capacity.

Enforcement sought Carter's on-the-record testimony to investigate the circumstances surrounding Merrill Lynch's disclosures on the Amended Form U5 of allegations of fraudulent activity, misconduct involving customers, and outside business activities. The Guidelines suggest that I consider the importance of the information requested as viewed from FINRA's perspective.³⁵ Because Carter refused to cooperate in any manner and provided no information responsive to Enforcement's requests, I cannot know with any certainty how much Carter's failure to appear hindered Enforcement's investigation. I can, however, glean from the allegations disclosed on the Amended Form U5 the nature of Enforcement's investigation and conclude that Carter may have possessed information responsive to Enforcement's requests and Enforcement's investigation related to possible FINRA rule violations, misconduct involving a customer, and fraudulent acts. I therefore find this factor aggravating. I find no mitigating factors.

"A failure to comply with Rule 8210 is a serious violation because it subverts [FINRA's] ability to execute its regulatory responsibilities."³⁶ I find that Carter's failure to appear for on-the-record testimony, after three Rule 8210 requests, "renders [her] presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests."³⁷ For violating FINRA Rules 8210 and 2010, I bar Carter from associating with any member firm in any capacity.

IV. Order

I bar Respondent Shakela Carter from associating with any FINRA member firm in any capacity for failing to appear for on-the-record testimony, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Carla Carloni
Hearing Officer

³⁴ FINRA Sanction Guidelines (2018) at 33, http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

³⁵ Guidelines at 33 (Consideration No. 1 (Importance of the information requested as viewed from FINRA's perspective)).

³⁶ *Dep't of Enforcement v. Reichman*, No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *46 (NAC July 21, 2011) (citing *Ricupero*, 2010 SEC LEXIS 2988, at *21).

³⁷ *PAZ Secs., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *10 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

Copies to: Shakela Carter (via first class mail)
Daniel M. Hibshoosh, Esq. (via email and first class mail)
Eric Hansen, Esq. (via email)
Richard Chin, Esq. (via email)
Jeffrey Pariser, Esq. (via email)