

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID A. CLARK
(CRD No. 6520351),

Respondent.

Disciplinary Proceeding
No. 2016050212201

Hearing Officer—JLC

DEFAULT DECISION

August 22, 2018

Respondent is barred from associating with any FINRA member in any capacity for twice failing to appear and provide testimony in violation of FINRA Rules 8210 and 2010. In light of this finding, the Hearing Officer makes no findings as to the other causes of action, as detailed below.

Appearances

For the Complainant: Dale A. Glanzman, Esq. and Mark A. Koerner, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

On May 3, 2018, the Department of Enforcement filed a six-cause Complaint against Respondent David A. Clark. Enforcement alleges in its sixth cause of action that Clark violated FINRA Rules 8210 and 2010 by twice failing to appear for on-the-record testimony (“OTR”).

Enforcement also alleges in causes one through five of its Complaint that Clark violated several provisions of FINRA’s Advertising Rule (FINRA Rule 2210) by operating an unapproved website and a social media page to promote his business as a registered representative of a broker-dealer. I decline to address these causes of action because Enforcement has not pleaded facts—in its Complaint or in a declaration—sufficient to identify (a) the relevant period of Clark’s alleged misconduct as it relates to these five causes of action; and (b) the version of the FINRA advertising rule in effect when Clark was associated with a

FINRA member.¹ Notwithstanding these pleading deficiencies, I would not have imposed additional sanctions for Clark's alleged advertising violations in light of the bar imposed for Clark's violations of FINRA Rules 8210 and 2010.²

Clark has not answered the Complaint.

On July 24, 2018, Enforcement filed a motion for entry of a default decision and imposition of sanctions (the "Default Motion"). The Default Motion is accompanied by a memorandum of law, the Declaration of Dale A. Glanzman, and seven exhibits.³ To date, Clark has not filed a response.

For the reasons set forth below, I find Clark in default, grant Enforcement's Default Motion as it relates to the sixth cause of action, and deem the allegations of the Complaint as they relate to the sixth cause of action admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Clark's Background

Clark first entered the securities industry in June 2015 when he became associated with FINRA member Edward Jones.⁴ On August 4, 2015, he became registered with FINRA as a General Securities Representative ("GSR") through his association with Edward Jones.⁵ Clark remained associated with Edward Jones as a GSR until May 31, 2016, when the firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating his FINRA registration.⁶

B. FINRA's Jurisdiction

FINRA retains jurisdiction over Clark pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with failing to comply

¹ The Complaint refers to FINRA Rule 2210 in the present tense and therefore it appears that Enforcement is alleging violations of the current version of the Rule (effective January 9, 2017). This was not, however, the version of the rule in effect when Respondent was associated with a FINRA member.

² Enforcement does not seek sanctions against Respondent for the alleged conduct related to the first five causes of action in the Complaint in light of the bar it seeks for Respondent's violations of FINRA Rule 8210 and 2010. Declaration of Dale A. Glanzman ("Glanzman Decl.") ¶ 22.

³ Enforcement's exhibits are referenced as "CX-__."

⁴ CX-1, at 3.

⁵ CX-1, at 3.

⁶ CX-1, at 3; Glanzman Decl. ¶ 6.

with requests for information that FINRA staff issued during the two-year period following the termination of his FINRA registration.

C. Origin of the Investigation

FINRA initiated its investigation on or about June 3, 2016, after Edward Jones filed a Form U5 terminating Clark's registration with FINRA.⁷ Clark's Form U5 listed the reason for termination as "Mr. Clark published an eBook online without prior approval from the firm."⁸

D. Clark Defaulted by Failing to Answer the Complaint

Enforcement served Clark with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on May 3, 2018, and the Complaint and Second Notice of Complaint on June 1, 2018.⁹ In each case, Enforcement served Clark by certified U.S. mail, return receipt requested, at his last-known residential address recorded in FINRA's Central Registration Depository ("Clark's CRD Address").¹⁰ Thus, Clark received valid constructive notice of this proceeding.¹¹

Pursuant to Rule 9215, Clark's Answer was due by May 31, 2018. Clark did not file an Answer to the Complaint and Second Notice of Complaint. Thus, Clark is in default.

On June 25, 2018, Hearing Officer Matthew Campbell issued an Order instructing Enforcement to file a Default Motion. On July 24, 2018, Enforcement filed a Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,¹² and deem the allegations in the Complaint as they relate to the sixth cause of action admitted.

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

Enforcement alleges in the sixth cause of action that Clark twice failed to appear and provide testimony. FINRA requested testimony from Clark to question him about statements he made on his website and social media page and to inquire whether he had any basis for the

⁷ Glanzman Decl. ¶ 5.

⁸ Glanzman Decl. ¶ 5; CX-1, at 3.

⁹ Glanzman Decl. ¶¶ 9-10; CX-2, at 19; CX-4, at 2.

¹⁰ Glanzman Decl. ¶¶ 9-10; CX-2, at 19; CX-3; CX-4, at 2; CX-5. Enforcement represents that it is unaware of any address for Respondent other than the one reported in CRD. Glanzman Decl. ¶ 9. Enforcement also provided copies of the First Notice of Complaint and Complaint and Second Notice of Complaint to Respondent by first-class mail. Glanzman Decl. ¶¶ 9-10. Neither first-class mailing was returned to Enforcement. Glanzman Decl. ¶¶ 9-10.

¹¹ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 n.21 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

¹² Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

statements contained on those sites.¹³ Enforcement also intended to question Clark about whether he had gained any customers from these sites.¹⁴

On January 4, 2018, FINRA staff sent Clark a letter pursuant to FINRA Rule 8210 requesting that he provide OTR on January 25, 2018, at FINRA's Chicago District Office.¹⁵ This letter informed Clark that he was obligated to appear and give testimony, and it advised him that a failure to provide information requested by the staff could violate Rule 8210 and lead to disciplinary action.¹⁶ This letter was sent by certified mail and first-class mail to Clark's CRD Address.¹⁷ The certified mail was delivered to Clark's CRD Address on January 18, 2018, but the receipt of delivery was acknowledged with an illegible signature.¹⁸ The first-class mailing was not returned to FINRA staff. Clark did not appear for testimony on January 25, 2018.¹⁹

On January 26, 2018, FINRA staff sent Clark a letter pursuant to FINRA Rule 8210 requesting that he provide OTR on February 13, 2018, at FINRA's Chicago District Office.²⁰ This letter informed Clark that he was obligated to appear and give testimony, and it advised him that a failure to provide information requested by the staff could violate Rule 8210 and lead to disciplinary action.²¹ This letter was sent by certified mail and first-class mail to Clark's CRD Address.²² The certified mailing was left unclaimed. The first-class mailing was not returned to FINRA staff.²³ Clark did not appear for testimony on February 13, 2018, and he has made no attempt to appear for testimony.²⁴

F. Clark Violated FINRA Rules 8210 and 2010

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210(a)(1), FINRA may require an associated person "to provide information orally, in

¹³ Complaint ("Compl.") ¶ 8; Glanzman Decl. ¶ 20.

¹⁴ Glanzman Decl. ¶ 20.

¹⁵ Compl. ¶ 14; FINRA initially scheduled Clark to appear, pursuant to FINRA Rule 8210, for OTR on December 15, 2017. Compl. ¶ 8. In an effort to negotiate a settlement with Clark, FINRA agreed to cancel this OTR. Compl. ¶¶ 11-12; Glanzman Decl. ¶ 15. Settlement negotiations between FINRA and Clark ultimately failed. Compl. ¶ 13.

¹⁶ Compl. ¶ 15.

¹⁷ Compl. ¶ 16.

¹⁸ Compl. ¶ 17.

¹⁹ Compl. ¶ 18.

²⁰ Compl. ¶ 19.

²¹ Compl. ¶ 20.

²² Compl. ¶ 21.

²³ Compl. ¶ 22.

²⁴ Compl. ¶ 23.

writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation” in connection with any investigation.

Rule 8210(c) is unequivocal—it requires compliance with a Rule 8210 request. It provides that “[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule.”

The Rule is unequivocal for a reason. It is crucial to FINRA’s ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.²⁵ Rule 8210 “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations” and “is at the heart of the self-regulatory system for the securities industry.”²⁶ A failure to respond promptly and completely to information requests frustrates FINRA’s ability to detect misconduct and protect investors and markets.²⁷

Rule 8210(d) provides that a request issued pursuant to Rule 8210 is deemed received by a formerly associated person if it is sent to the person’s last-known residential CRD address, unless the staff responsible for the mailing has actual knowledge that the address is out of date or no longer current.

In addition, a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.²⁸

As stated above, FINRA requested, pursuant to FINRA Rule 8210, that Clark appear and provide testimony on January 25, 2018, and February 13, 2018. FINRA properly served Clark with both Rule 8210 requests. Clark failed to appear and provide testimony on both dates. Accordingly, Clark violated FINRA Rules 8210 and 2010.

²⁵ See, e.g., *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff’d*, 57 S.E.C. 330 (2004) (“It is well established that because NASD [FINRA’s predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”) (citation omitted).

²⁶ *Dep’t of Enforcement v. Saliba*, No. 2013037522501, 2017 FINRA Discip. LEXIS 50, at *69 (OHO Dec. 15, 2017) (quoting *Dep’t of Enforcement v. Texas E&P Partners, Inc.*, No. 2014040501801, 2016 FINRA Discip. LEXIS 59, at *66-67 (OHO Dec. 13, 2016) and *North Woodward Fin. Corp.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *9-10 (NAC July 19, 2016)).

²⁷ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied*, 566 F.3d 1172 (D.C. Cir. 2009).


²⁸ See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 n.36 (Jan. 30, 2009).

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend that if an individual does not respond in any manner to a request for information a bar in all capacities should be standard.²⁹ The Guidelines further provide that when an individual fails to respond the principal consideration in determining sanctions is the importance of the information requested as viewed from FINRA's perspective.³⁰ The information FINRA was seeking from the Clark was important. FINRA was investigating various statements Clark made on his public website and social media page.³¹ I find no mitigating factors that would warrant Clark remaining in the securities industry. Accordingly, I find that the appropriate sanction is a bar in all capacities.

IV. Order

Respondent David A. Clark 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.


Jennifer L. Crawford
Hearing Officer

Copies to:

David A. Clark (via overnight courier and first-class mail)
Dale A. Glanzman, Esq. (via email and first-class mail)
Mark A. Koerner, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)

²⁹ FINRA Sanction Guidelines at 33 (2018), <http://www.finra.org/industry/sanction-guidelines>.

³⁰ *Id.*

³¹ Compl. ¶ 8; Glanzman Decl. ¶ 20.