

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

J. GORDON CLOUTIER JR.
(CRD No. 2817022),

Respondent.

Disciplinary Proceeding
No. 2016051652702

Hearing Officer–MC

DEFAULT DECISION

August 27, 2018

Respondent is barred from associating with any member firm in any capacity for failing to appear and provide testimony under oath as requested pursuant to FINRA Rule 8210.

For the Complainant: Emmet Ong, Esq., Ralph DeSena, Esq., and Gina Petrocelli, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

Respondent J. Gordon Cloutier, Jr., associated with a FINRA member firm in October 1996. In October 2016 Cloutier's FINRA member firm employer filed a Uniform Termination Notice for Securities Registration ("Form U5") terminating his association with the firm.

In September 2017 and January 2018, the Department of Enforcement sent Cloutier requests pursuant to FINRA Rule 8210 to appear and testify under oath about the circumstances of the termination. Cloutier did not respond to the requests.

Enforcement filed and served two Notices of Complaint and the Complaint charging Cloutier with violating Rules 8210 and 2010. He did not file an Answer. On July 24, 2018, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by a Memorandum of Law, the Declaration of Emmet P. Ong ("Ong Decl."), and thirteen exhibits (CX-1 through CX-13).

Cloutier did not respond to the motion.

For the reasons set forth below, I grant Enforcement's Default Motion, deem the facts alleged in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a), and find Cloutier in default.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Cloutier entered the securities industry in October 1996 and registered with FINRA the following December. In April 2009, Cloutier associated with Wells Fargo Advisors, LLC as a General Securities Representative.¹ On October 7, 2016, Wells Fargo filed a Form U5 terminating his association with the firm.²

B. FINRA's Jurisdiction

Cloutier is currently neither associated with a member firm nor registered with FINRA. However, Enforcement filed the Complaint on April 30, 2018, less than two years after the termination of his registration and his failures to appear to provide testimony under oath pursuant to Rule 8210. Therefore, FINRA maintains jurisdiction over him for the purposes of this proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws.³

C. Origin of the Investigation

Enforcement initiated its investigation of Cloutier after Wells Fargo filed the Form U5 disclosing that it terminated Cloutier's association with the firm because he "asked a client for a personal loan . . . [and] did not confirm authorization the same day with the client before attempting a trade."⁴

D. Respondent's Default

Enforcement served Cloutier 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 April 30, 2018, and the Complaint and Second Notice of Complaint on May 29, 2018. In each case, Enforcement served Cloutier by first-class certified mail addressed to his last known residential address recorded in FINRA's Central Registration Depository ("CRD") in addition to an address in Richardson, Texas that

¹ Complaint ("Compl.") ¶ 2.

² *Id.* ¶ 3.

³ Cloutier failed to appear to provide testimony under oath on October 25, 2017, and January 31, 2018. Compl. ¶¶ 13, 17.

⁴ CX-1, at 13; Ong Decl. ¶ 5.

Enforcement located through a public records search during its investigation (“Richardson address”).⁵ Thus, Cloutier received valid constructive notice of this proceeding.

Pursuant to Rule 9215, Cloutier’s Answer was due by June 18, 2018. Cloutier did not file an Answer to the Complaint and Second Notice of Complaint. Thus, Cloutier is in default.⁶

E. Respondent Violated FINRA Rules 8210 and 2010 by Failing to Appear and Provide Testimony.

The Complaint’s sole cause of action alleges that Cloutier violated FINRA Rules 8210 and 2010 by failing to comply with two requests to appear and provide testimony under oath in connection with the investigation into the circumstances of the termination of his association with Wells Fargo.

Rule 8210 requires persons subject to FINRA’s jurisdiction to provide information to FINRA upon request. Rule 8210 is one of FINRA’s most important tools for investigating potential wrongdoing.⁷ By its terms, the rule is unequivocal and “grants FINRA broad authority to obtain information concerning an associated person’s securities-related business ventures.”⁸ Furthermore, “[a]ssociated persons therefore must cooperate fully in providing FINRA with information” requested pursuant to the rule.⁹

Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction “to testify . . . under oath or affirmation . . . with respect to any matter involved in the investigation.” Rule 8210(c) provides that: “No member or person shall fail to provide information or testimony . . . pursuant to this Rule.” Cloutier therefore violated Rule 8210 when he failed, on two separate occasions, to appear and provide testimony as requested by FINRA in the course of its investigation.

1. Respondent Failed to Appear and Provide Testimony Under Oath on October 25, 2017.

On September 27, 2017, Enforcement issued its first request to Cloutier to appear and provide testimony under oath about the circumstances surrounding Wells Fargo’s filing of the Form U5. The request, issued pursuant to Rule 8210, scheduled Cloutier’s testimony on October 25, 2017. With the request, Enforcement notified Cloutier that failing to appear on the scheduled

⁵ Compl. ¶ 5.

⁶ Cloutier may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

⁷ See *Dep’t of Mkt. Regulation v. Sciascia*, No. CMS040069, 2006 NASD Discip. LEXIS 22, at *11 (NAC Aug. 7, 2006) (analyzing NASD Procedural Rule 8210, the predecessor to FINRA Rule 8210).

⁸ *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

⁹ *Id.* at *13 (citing *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009)).

date could violate Rule 8210 and might lead to a disciplinary proceeding that could result in his being sanctioned, and possibly barred from the securities industry.¹⁰

Enforcement sent the first request to the CRD and Richardson addresses. Postal Service records confirmed that the request was delivered to the Richardson address on October 2, 2017. Enforcement received a receipt with a signature, not Cloutier's, but of Janet P. Cloutier, who Enforcement concluded, based on a review of its investigative file and public records, is apparently related to Cloutier.¹¹

Cloutier did not appear to provide testimony on October 25 as requested.¹²

2. Respondent Failed to Appear and Provide Testimony Under Oath on January 31, 2018.

On January 9, 2018, Enforcement sent a second request to Cloutier to appear and provide testimony pursuant to Rule 8210 on January 31, 2018. This request, too, contained a warning that failing to comply with the request would violate Rule 8210.¹³

As with the first request, Enforcement sent the second request to both the CRD and Richardson addresses. Once again, Postal Service records confirmed the delivery to the Richardson address, and Enforcement received a receipt for the delivery bearing the signature of Janet P. Cloutier.¹⁴ The Postal Service returned the second request Enforcement mailed to Cloutier's CRD address. On the envelope was a label stating that the forwarding address for the addressee was the Richardson address.¹⁵

As the scheduled date for Cloutier's testimony approached, Enforcement made additional efforts to ensure his appearance. On January 30, 2018, Enforcement tried to reach Cloutier by phone at a number Wells Fargo provided, and left a voice message. Enforcement also sent an email to Cloutier's personal email account. Cloutier did not respond to either message.¹⁶ The following day, Cloutier did not appear to provide testimony as requested.¹⁷

¹⁰ Compl. ¶ 12.

¹¹ Compl. ¶ 13; Ong Decl. ¶ 10.

¹² Compl. ¶ 13.

¹³ Compl. ¶ 14.

¹⁴ Compl. ¶ 15.

¹⁵ Compl. ¶ 18.

¹⁶ Compl. ¶ 16.

¹⁷ Compl. ¶ 17.

By failing to comply with the two requests to appear and testify, Cloutier violated FINRA Rules 8210 and 2010.¹⁸

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.¹⁹ 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.²⁰

FINRA needed the information requested to perform its regulatory function to fully investigate potential misconduct. Enforcement was investigating allegations that Cloutier had solicited a client loan and attempted to make an unauthorized trade. Cloutier's failure to provide sworn testimony prevented FINRA from fulfilling its regulatory responsibilities.²¹ The evidence reveals no excuse for Cloutier's failure to respond to FINRA's requests.

I find that there are no mitigating factors. Thus, I conclude that the appropriate sanction is a bar in all capacities.

IV. Order

Respondent J. Gordon Cloutier, Jr. 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 the final disciplinary action of FINRA.


Matthew Campbell
Hearing Officer

¹⁸ A violation of Rule 8210 also violates Rule 2010. *Kirlin Securities*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *64–65 (Dec. 10, 2009).

¹⁹ FINRA Sanction Guidelines at 33 (2018), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

²⁰ *Id.*

²¹ *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at *19–20 (NAC Aug. 12, 2004) (finding that a person who fails to respond to FINRA requests for information subverts FINRA's regulatory responsibilities).

Copies to:

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