

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD G. CODY
(CRD No. 2794558),

Respondent.

Disciplinary Proceeding
No. 2016048538901

Hearing Officer–MAD

DEFAULT DECISION

August 7, 2017

Respondent is barred from associating with an FINRA member firm in any capacity for: (1) providing false and misleading information to FINRA, (2) failing to provide documents and information to FINRA, and (3) failing to appear and provide testimony, in violation of FINRA Rules 8210 and 2010.

For the Complainant: Lisa M. Colone, Esq., and Christopher J. Kelly, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

FINRA’s Department of Enforcement initiated this disciplinary proceeding against Richard G. Cody by filing a three-cause Complaint with FINRA’s Office of Hearing Officers. The Complaint alleges that Cody violated FINRA Rules 8210 and 2010¹ by providing false and misleading information, failing to provide documents and information, and failing to appear and provide testimony in connection with FINRA’s investigation.

Cody failed to answer or otherwise respond to the Complaint. Accordingly, on July 5, 2017, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”).² Cody did not respond to the Default Motion.

¹ FINRA’s Rules are available at www.finra.org/rules.

² A declaration (“Decl.”) and exhibits labeled CX-1 through CX-9 support the Default Motion.

The Hearing Officer finds Cody in default, grants Enforcement’s Default Motion, and deems the allegations in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Cody’s Background

Cody first entered the securities industry in 1996.³ Cody was registered with FINRA nearly continuously from March 1997 until January 7, 2013, through his associations with multiple member firms. Cody was registered as a General Securities Representative, and beginning in December 2011, as an Operations Professional.⁴

From January 7, 2013, through January 6, 2014, Cody was suspended from associating with any FINRA member in any capacity based on findings that he violated: (1) “NASD Rules 2110 and 2310 by recommending quantitatively and qualitatively unsuitable transactions in customer accounts”; (2) “NASD Rule 2110 by sending customers misleading and unapproved account summaries”; and (3) “NASD Rule 2110 by failing to update his [Uniform Application for Securities Industry Registration (‘Form U4’)] in a timely manner to disclose settlements to customers.”⁵

After his one-year suspension, Cody re-entered the industry and registered as a General Securities Representative and an Operations Professional with Concorde Investment Services, LLC (“Concorde”).⁶ He was registered through Concorde from March 2014 until August 5, 2016.⁷ Concorde terminated Cody and filed an amended Uniform Termination Notice for Securities Industry Registration (“Form U5”), noting that it discharged Cody “due to internal review into potential securities business activity during a period of suspension from securities activities prior to his association with Concorde.”⁸

On August 17, 2016, Cody became registered as a General Securities Representative and an Operations Professional with IFS Securities (“IFS”).⁹ IFS terminated Cody approximately one month later. IFS filed an amended Form U5, stating that it discharged Cody for “forgery [and]

³ CX-1.

⁴ CX-1.

⁵ CX-2.

⁶ CX-1.

⁷ CX-1.

⁸ CX-1.

⁹ CX-1.

attempting to sell away.”¹⁰ Cody has not been registered or associated with a FINRA member firm since September 12, 2016.¹¹

B. FINRA’s Jurisdiction

FINRA retains jurisdiction over Cody 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 misconduct committed while he associated with a FINRA member and with failing to respond to requests for information and testimony, as well as providing false and misleading information to FINRA, during the two-year period after the termination of his registration.

C. FINRA’s Investigation

In 2016, a former Cody customer contacted FINRA and informed the staff that she recently had learned that Cody had been suspended for most of 2013, but that Cody had continued to serve as her broker during that year.¹² The customer forwarded to the staff emails she received from Cody’s personal email account (the “Personal Email Account”) in 2013, while he was suspended.¹³ The customer also forwarded to FINRA staff an email from herself to a business email account that Cody used prior to (and following) his suspension (the “Business Email Account”).¹⁴ The forwarded emails discussed investment strategy and potential trades in one or more of the customer’s accounts.¹⁵

FINRA then opened an investigation to determine if Cody had violated the terms of his suspension by acting in a manner requiring registration during 2013.¹⁶ FINRA staff learned that Cody’s wife, JT, a registered representative, became associated with Concorde on January 15, 2013, immediately after Cody’s year-long suspension began.¹⁷ Although JT first entered the securities industry in 2001, she had never worked as a registered representative with customers of her own prior to joining Concorde.¹⁸ JT took over Cody’s book of business upon becoming registered with Concorde; indeed, all or nearly all of JT’s customers had been Cody’s customers

¹⁰ CX-1.

¹¹ CX-1.

¹² Complaint (“Compl.”) ¶ 10.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* ¶ 11.

¹⁷ *Id.* ¶ 9.

¹⁸ *Id.* ¶ 12.

at his prior firm.¹⁹ For the most part, Cody did not tell his customers that he had been suspended.²⁰ In fact, in early 2013, Cody told many of his customers that JT had joined his office and would be working with him.²¹ Although JT was their broker of record during the year of Cody's suspension, many of Cody's customers believed that Cody continued to be their broker throughout the time he was suspended and JT was his assistant.²²

FINRA's investigation also revealed that Cody, with JT's assistance, continued to act as a registered representative in all respects during his year-long suspension. Specifically, during that time, Cody continued to: initiate communications with customers about account performance and investment strategies; access customers' account information with Concorde; meet in person with customers to discuss account performance and investment strategies; make securities recommendations to customers; and enter trades for customers.²³

D. Cody's Default

On April 11, 2017, Enforcement served Cody with the First Notice of Complaint and Complaint by first-class and certified mail at his residential address recorded in the Central Registration Depository ("CRD address").²⁴ Enforcement also sent the First Notice of Complaint and Complaint to Cody's last known residential address in Jacksonville, Florida (the "Jacksonville Alternate Address").²⁵ The first-class mailings were not returned.²⁶ The certified mailing sent to the CRD Address was returned.²⁷ The United States Postal Service tracking website reflected that the certified mailing sent to the CRD Address was forwarded by the postal service to an unspecified address in Jacksonville, Florida.²⁸ A notice was left at a Jacksonville address, and after no one claimed the mailing from the post office for nearly two months, it was returned to sender.²⁹ The certified mailing sent to the Jacksonville Alternate Address also was returned.³⁰ A notice was left at the Jacksonville Alternate Address, and after no one claimed the

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Decl. ¶¶ 13-21.

²⁵ *Id.*

²⁶ *Id.* ¶ 22.

²⁷ *Id.* ¶ 23.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* ¶ 24.

mailing from the post office for more than a month, it was returned to FINRA.³¹ Cody did not file an answer or otherwise respond to the Complaint.

On May 10, 2017, Enforcement served Cody with the Second Notice of Complaint and Complaint by sending them via regular first-class mail and certified mail to Cody's CRD Address and the Jacksonville Alternate Address.³² The first-class mailings were not returned.³³ Both of the certified mailings were returned. With respect to the certified mailing sent to Cody's CRD Address, the postal service again forwarded it to an unspecified address in Jacksonville; a notice was left at that address, and nearly a month later, the certified mailing was deemed "unclaimed" and returned to FINRA.³⁴ With respect to the certified mailing sent to the Jacksonville Alternate Address, a notice was left at the premises.³⁵ Approximately a month later, the certified mailing was determined to be "unclaimed" and returned to sender.³⁶ Cody did not file an answer or otherwise respond to the Complaint.

The Hearing Officer finds that Enforcement properly served Cody with the Complaint and that Cody received valid constructive notice of this proceeding. The Hearing Officer further finds that Cody defaulted by failing to file an Answer.³⁷ Accordingly, the Hearing Officer deems the allegations in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

E. Cody's Violations of FINRA Rules 8210 and 2010

The Complaint alleges that Cody violated FINRA Rules 8210 and 2010 by (1) providing false and misleading information to FINRA, (2) failing to provide documents and information to FINRA, and (3) failing to appear and provide testimony in connection with Enforcement's investigation.

FINRA Rule 8210 requires persons subject to its jurisdiction to provide information to FINRA upon request. FINRA Rule 8210 is considered to be among FINRA's most important tools for investigating potential wrongdoing.³⁸ The Rule is unequivocal in its mandate and grants

³¹ *Id.*

³² *Id.* ¶¶ 27-28.

³³ *Id.* ¶ 29.

³⁴ *Id.* ¶ 30.

³⁵ *Id.* ¶ 31.

³⁶ *Id.*

³⁷ Cody is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

³⁸ 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).

FINRA broad authority to obtain information regarding matters concerning a FINRA investigation.³⁹

FINRA Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction to “provide information . . . in writing, or electronically . . . with respect to any matter involved in the investigation . . .” FINRA Rule 8210(a)(2) authorizes FINRA to “inspect and copy the books, records, and accounts” of persons subject to its jurisdiction “with respect to any matter involved in the investigation . . . that is in such . . . person’s possession, custody, or control.” FINRA Rule 8210(c) provides that: “No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.” It is a violation of FINRA Rule 8210 for a person to provide false or misleading information to FINRA in response to a request for information or during testimony.

1. False and Misleading Information to FINRA

Cause one alleges that Cody provided false and misleading information to FINRA during its investigation.

Cody provided false and misleading information to FINRA in a written response to a Rule 8210 request, dated February 12, 2016 (the “February 12 Response”), as well as during two separate sessions of on-the-record testimony (“OTR”) pursuant to Rule 8210, on November 15, 2016 (the “November 15 OTR”) and November 28, 2016 (the “November 28 OTR”).⁴⁰ His false and misleading information to FINRA covered many topics, such as his securities activities during his one-year suspension, his relationship with customers, and his customers’ private investments.⁴¹

Regarding his securities activities during his one-year suspension, Cody falsely denied conducting any securities business.⁴² He also falsely denied using any email accounts, other than those Concorde approved, to conduct securities business, when he had used his Personal Email Account, while suspended and at other times, to conduct securities business.⁴³ Cody falsely denied entering trades for customers and directing JT to enter trades for customers while he was suspended, when, in fact, he repeatedly entered trades personally for customers and directed JT to do so while suspended.⁴⁴

³⁹ See *Dep’t of Enforcement v. Fawcett*, No. C9A040024, 2007 NASD Discip. LEXIS 2, at *11-12 (NAC Jan. 8, 2007), *aff’d*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598 (Nov. 8, 2007).

⁴⁰ Compl. ¶¶ 13-28.

⁴¹ *Id.*

⁴² *Id.* ¶ 14.

⁴³ *Id.* ¶ 17.

⁴⁴ *Id.* ¶ 21.

Cody falsely denied maintaining relationships with his customers during his one-year suspension. For example, Cody falsely denied making securities recommendations to customer RF and placing trades in RF's account during his year-long suspension, when, in fact, he made securities recommendations to RF and placed or directed trades in RF's account throughout the duration of his suspension. When questioned about his involvement with the trades during his November 28 OTR, Cody falsely testified that he was not involved. However, an email chain between Cody's Business Email Account and customer RF, occurring during Cody's 2013 suspension, revealed that Cody made securities recommendations to customer RF, and then executed or directed JT to execute the trades that he solicited.⁴⁵

When FINRA inquired regarding whether Cody's customers had made any investments outside their brokerage accounts in private company PA, Cody falsely testified that they had not. However, Cody participated in three customers' private investments in PA just months prior to the November 28 OTR. The three customers, through Cody, invested a total of approximately \$595,000 in PA. None of the customers received any return on their investments in PA because their funds allegedly were lost in a "scam" perpetrated against PA.⁴⁶

Based on the foregoing, the Hearing Officer concludes that Cody violated FINRA Rules 8210 and 2010 by providing false and misleading information to FINRA.

2. Failure to Provide Documents and Information to FINRA

Cause two alleges that Cody failed to provide requested documents and information to FINRA in response to Rule 8210 requests.

The October 31, 2016 Rule 8210 Request

On October 31, 2016, FINRA staff sent Cody a request pursuant to Rule 8210, requiring Cody to provide FINRA staff with certain documents and information (the "October 31 Request").⁴⁷ Cody responded to some, but not all, of the requests set forth in the October 31 Request.⁴⁸ On December 1, 2016, FINRA staff sent a second request for the outstanding documents and information.⁴⁹ Cody did not respond.⁵⁰ FINRA staff then sent a third request for

⁴⁵ *Id.* ¶ 24.

⁴⁶ *Id.* ¶¶ 27-28.

⁴⁷ *Id.* ¶¶ 29.

⁴⁸ *Id.* ¶¶ 30-32.

⁴⁹ *Id.* ¶¶ 33-34.

⁵⁰ *Id.*

the outstanding documents and information on December 29, 2016.⁵¹ On February 1, 2017, Cody provided an incomplete response to just one of the outstanding requests.⁵² Cody never responded to several of the requests for documents and information originally set forth in the October 31 Request.⁵³ Specifically, he failed to produce certain requested cell phone records, tax returns, and loan documents.⁵⁴ In addition, he failed to produce complete records in response to the October 31 Request for certain credit card and bank statements.⁵⁵

The December 6, 2016 Rule 8210 Request

On December 6, 2016, after Cody's November 15 and November 28 OTRs, FINRA staff sent Cody a separate request pursuant to FINRA Rule 8210, requiring him to provide certain documents and information related to topics raised during the OTRs (the "December 6 Request").⁵⁶ Cody did not respond.⁵⁷ On December 20, 2016, FINRA staff sent a second Rule 8210 request letter ("December 20 Request"), seeking the same documents and information set forth in the December 6 Request.⁵⁸ Although Cody emailed FINRA staff in response to its December 20 Request, he did not produce any of the requested documents or information.⁵⁹ As a result, FINRA staff sent a third request for the documents and information.⁶⁰ Cody never responded to that letter, and in so doing, failed to produce any of the documents or information originally set forth in the December 6 Request, namely, his IRS account transcript for tax year 2012 (when there was a federal tax lien imposed against him and JT), documents pertaining to a then-pending arbitration involving Cody, and certain bank and credit card statements from the year of Cody's suspension and beyond.⁶¹

The January 5, 2017 Rule 8210 Request

On January 5, 2017, FINRA staff sent Cody a separate request pursuant to FINRA Rule 8210, requiring Cody to provide FINRA staff with certain correspondence and documents related

⁵¹ *Id.* ¶ 34.

⁵² *Id.* ¶ 35.

⁵³ *Id.* ¶ 36.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* ¶ 37.

⁵⁷ *Id.* ¶ 38.

⁵⁸ *Id.*

⁵⁹ *Id.* ¶¶ 39-40.

⁶⁰ *Id.* ¶ 41.

⁶¹ *Id.* ¶ 42.

to private company PA (the “January 5 Request”).⁶² Cody did not respond.⁶³ On January 17, 2017, FINRA staff sent Cody a second request for the documents.⁶⁴ On January 19, 2017, Cody emailed FINRA staff in response to one of the requests for information, namely, the request for correspondence, set forth in the January 5 Request.⁶⁵ FINRA staff replied to Cody to inform him that he did not respond to the other requests for information set forth in the January 5 Request, namely, the request for all documents and all emails concerning PA.⁶⁶ Cody did not reply to FINRA staff’s email and failed to produce the requested documents and emails concerning PA, originally sought in the January 5 Request.⁶⁷

The Hearing Officer concludes that Cody violated FINRA Rules 8210 and 2010 by failing to provide information and documents to FINRA in response to Rule 8210 requests.

3. Failure to Provide Testimony

Cause three alleges that Cody failed to provide testimony to FINRA in response to Rule 8210 requests.

On January 5, 2017, FINRA staff sent Cody a separate letter requesting an additional OTR pursuant to FINRA Rule 8210.⁶⁸ Cody and FINRA staff exchanged several emails regarding logistics.⁶⁹ On January 6, 2017, FINRA staff emailed Cody and asked him to advise staff if he believed he had a legitimate reason why he would be unavailable to testify on the selected date, and, if so, to propose alternate dates for his testimony.⁷⁰ Otherwise, FINRA informed Cody, his testimony was set for January 17, 2017, in FINRA’s Boca Raton office.⁷¹ Cody neither replied to FINRA staff’s email nor appeared for testimony on January 17, 2017.⁷²

FINRA staff then sent Cody another Rule 8210 request letter, dated January 17, 2017, again requesting an additional OTR.⁷³ Cody emailed FINRA staff on January 19, 2017, again to

⁶² *Id.* ¶ 43.

⁶³ *Id.* ¶ 44.

⁶⁴ *Id.*

⁶⁵ *Id.* ¶ 45.

⁶⁶ *Id.* ¶ 46.

⁶⁷ *Id.* ¶ 47.

⁶⁸ *Id.* ¶ 48.

⁶⁹ *Id.* ¶¶ 49-55.

⁷⁰ *Id.* ¶ 56.

⁷¹ *Id.*

⁷² *Id.* ¶¶ 57-58.

⁷³ *Id.* ¶ 59.

discuss the logistics of his testimony.⁷⁴ FINRA staff replied to Cody and asked him to provide dates within the ensuing two weeks when he would be available to testify, and the FINRA office from which he would like to testify.⁷⁵ Otherwise, FINRA staff advised Cody that he would be expected to appear for testimony on January 23, 2017, at FINRA's Boca Raton District office.⁷⁶ Cody neither replied to FINRA staff's email nor appeared for testimony on January 23, 2017.⁷⁷

The Hearing Officer concludes that Cody violated FINRA Rules 8210 and 2010 by failing to provide testimony to FINRA in response to Rule 8210 requests.

III. Sanctions

The Hearing Officer bars Cody from associating with any FINRA member firm in any capacity for his violations of FINRA Rule 8210 and 2010.

FINRA's Sanction Guidelines ("Guidelines") recommend that, if an individual fails to respond or to respond truthfully to a Rule 8210 request, a bar in all capacities should be standard.⁷⁸ "The failure to respond truthfully to a FINRA Rule 8210 request is as serious and harmful as a complete failure to respond, and comparable sanctions are appropriate."⁷⁹

In determining the appropriate sanction, the Guidelines identify as a principal consideration the importance of the information as viewed from FINRA's perspective.⁸⁰ Here, Cody intentionally provided false information to FINRA to conceal the securities activities he engaged in during his one-year suspension. It was clearly important to FINRA to learn if one of its registered representatives ignored a suspension order, as it would indicate that the representative was unable to follow the industry's rules and regulations. Whether Cody engaged in securities activities in 2013 was also important to FINRA in light of the fact that serious sales practice violations from that time period were reported. It was very important for FINRA to learn about Cody's former customers' investments in PA, resulting in a total loss of nearly \$600,000 when funds were allegedly taken in a "scam" perpetrated against PA. It was important for FINRA to know what due diligence Cody performed and what terms of investments were made, particularly when those customers later accused Cody of procuring the investments by forgery

⁷⁴ *Id.* ¶ 60.

⁷⁵ *Id.* ¶ 61.

⁷⁶ *Id.*

⁷⁷ *Id.* ¶¶ 62-63.

⁷⁸ FINRA Sanction Guidelines at 33 (2017), <http://www.finra.org/Industry/Sanction-Guidelines>.

⁷⁹ *Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS __, at *__ (NAC July 24, 2017) (quoting *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *31 (NAC Mar. 9, 2015)).

⁸⁰ Guidelines at 33.

and without their authorization. Given the “[i]mportance of the information” about which Cody lied, a bar is warranted for his failure to respond truthfully to FINRA.

A bar is also appropriate for Cody’s failure to appear for an additional OTR session. It was important for FINRA staff to be able to question Cody, under oath, about his former customers’ serious allegations against him, among other topics.

When Cody did respond to Rule 8210 requests for information, he only partially responded to some of the requests. The Guidelines provide that, where an individual provides a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.⁸¹ Additionally, the Guidelines contain certain principal considerations in determining sanctions for a partial but incomplete response: (1) the importance of the information requested but not provided (as viewed from FINRA’s perspective), and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explained valid reasons(s) for deficiencies in the response.⁸²

The subjects about which Cody failed to provide documents and information were very important. Some of the documents and information sought by the requests that Cody ignored bore on whether Cody engaged in securities activities while suspended and on Cody’s former customers’ investments in PA, which, for the reasons set forth above, were very important to FINRA.

Moreover, some of the requested documents and information pertained to other topics under investigation by FINRA. As set forth in the Declaration, the SEC charged Cody in federal court “with defrauding his retired clients.” Additionally, former customers have alleged that Cody forged their signatures and invested their funds in a particular private, non-traded Real Estate Investment Trust without their authorization. Other customers alleged that Cody took money belonging to them. These topics are of great importance to FINRA.

FINRA gave Cody numerous chances to respond to the request letters, and Cody never provided a reason for the deficiencies in his responses. In light of the foregoing, the Hearing Officer also imposes a bar against Cody in connection with his failure to provide documents and information to FINRA.

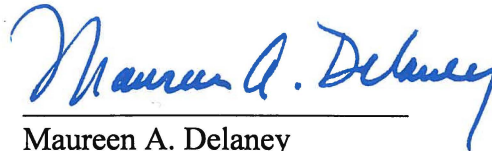
IV. Order

Respondent Richard G. Cody is barred from associating with any FINRA member firm in any capacity for (1) providing false and misleading information to FINRA, (2) failing to provide

⁸¹ *Id.*

⁸² *Id.*

documents and information to FINRA, and (3) failing to appear and provide 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.



Maureen A. Delaney
Hearing Officer

Copies to:

Richard G. Cody (via overnight and first-class mail)
Lisa M. Colone, Esq. (via email and first-class mail)
Christopher J. Kelly, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)