

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT BLAKE ELLENDER  
(CRD No. 2345532),

Respondent.

Disciplinary Proceeding  
No. 2015045846502

Hearing Officer—KBW

**DEFAULT DECISION**

May 31, 2017

**Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond fully and timely to requests for information and documents, in violation of FINRA Rules 8210 and 2010.**

**Appearances**

For the Complainant: Kathryn M. Wilson, Esq., and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Pro se.

**DECISION**

**I. Introduction**

In 2015, FINRA staff began an examination into whether Respondent Robert Blake Ellender had failed to follow company policies and procedures regarding expense reports and had failed to disclose financial information and an outstanding arrest on his Uniform Application for Securities Industry Registration (Form U4). In connection with that examination, FINRA staff sent Respondent requests for information and documents pursuant to FINRA Rule 8210.

The Complaint asserts two causes of action. The first cause alleges that Respondent failed to timely respond to two requests for information and documents. The second cause alleges that Respondent completely failed to respond to two subsequent requests for information and documents.

On March 29, 2017, the Department of Enforcement filed a motion for entry of default decision (“Default Motion”), together with a memorandum supporting Enforcement’s Default

Motion, counsel's declaration in support of Enforcement's Default Motion ("Decl."), and supporting exhibits.<sup>1</sup> Respondent did not respond to the Default Motion.

For the reasons set forth below, I find Respondent in default and grant Enforcement's Default Motion.

## **II. Findings of Fact and Conclusions of Law**

### **A. Respondent's Background**

Respondent first became associated with a FINRA member firm in 1993. Between 1993 and 2013, Respondent was associated with several FINRA member firms. From 2013 to 2015, he was registered with FINRA member firm Invesco Distributors, Inc. ("Invesco") as a General Securities Representative.<sup>2</sup> Respondent is not currently associated with any FINRA member firm.<sup>3</sup>

### **B. Origin of the Investigation**

In June 2015, Invesco filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that it had terminated Respondent's employment for "failure to follow company policies and procedures regarding expense reports . . . and the Invesco Code of Conduct."<sup>4</sup> The Form U5 also disclosed that Respondent had "failed to disclose an outstanding arrest and financial matter on the Form U4 application filed with FINRA."<sup>5</sup> FINRA staff opened an examination to investigate these allegations.<sup>6</sup>

### **C. FINRA's Jurisdiction**

FINRA retains jurisdiction over Respondent 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 respond to requests for information during the two-year period after the termination of his registration.

### **D. Respondent's Default**

On February 10, 2017, I issued an order setting the initial pre-hearing conference for February 27, 2017. At the initial pre-hearing conference, Respondent stated that he did not want to participate further in this proceeding and the parties discussed the possibility of settling within

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<sup>1</sup> The exhibits supporting the declaration are labeled with the prefix "CX-".

<sup>2</sup> CX-1, at 3; Decl. ¶¶ 5-6.

<sup>3</sup> Decl. ¶ 8

<sup>4</sup> CX-2, at 2.

<sup>5</sup> CX-2, at 2.

<sup>6</sup> Decl. ¶¶ 7, 9.

the week.<sup>7</sup> In light of Respondent's stated plans and the parties' discussion, we did not discuss a schedule which would govern this proceeding or other matters that may aid in the orderly and expeditious disposition of this proceeding.

Rather, during the initial pre-hearing conference, I scheduled a pre-hearing conference to be held on March 6, 2017, if settlement papers were not signed by then. Both at the initial pre-hearing conference and in a subsequent order, I reminded the parties that a failure to appear at the conference, in person or through counsel or a representative, may be deemed a default.<sup>8</sup>

Because the Office of Hearing Officers received no filing indicating that settlement papers had been signed, I held the pre-hearing conference on March 6, 2017. Consistent with his stated plans, Respondent did not appear, in person or through counsel, at that pre-hearing conference.<sup>9</sup>

Accordingly, I issued an order directing Respondent to show cause, if any, why he should not be held in default pursuant to FINRA Rules 9241(f) and 9269(a) and scheduled the Show Cause Hearing to be held by telephone on March 14, 2017 ("Show Cause Order"). Like my order setting the March 6 pre-hearing conference, the Show Cause Order warned that a failure to appear at the Show Cause Hearing, in person or through counsel, may be deemed a default. The Office of Hearing Officers sent the Show Cause Order by first-class mail to Respondent's most current residential address as reflected in the Central Registration Depository ("CRD Address") and electronically to Respondent's email address.

Nevertheless, Respondent did not appear, in person or through counsel, at the Show Cause Hearing.<sup>10</sup> I therefore issued an order directing Enforcement to serve and file a motion for entry of a default decision. The Office of Hearing Officers sent a copy of this order by first-class mail to Respondent's CRD Address and electronically to Respondent's email address.

FINRA Rule 9269 provides that a Hearing Officer may issue a default decision against a Party who "fails to appear at a pre-hearing conference . . . of which the Party has due notice."<sup>11</sup> In addition, FINRA Rule 9241 provides, "The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a Party that fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party has due notice."<sup>12</sup>

Respondent had due notice of both the March 6 pre-hearing conference and the Show-Cause Hearing. He failed to appear, in person or through counsel, at both. Accordingly, I find

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<sup>7</sup> Initial Pre-Hearing Conference Transcript ("IPHC Tr.") 12-16.

<sup>8</sup> IPHC Tr. 15-17; Feb. 27, 2017 Order Setting Pre-Hearing Conference at 1.

<sup>9</sup> Mar. 6, 2017 Tr. 3-4.

<sup>10</sup> Mar. 14, 2017 Tr. 3.

<sup>11</sup> FINRA Rule 9269(a).

<sup>12</sup> FINRA Rule 9241(f).

Respondent in default pursuant to FINRA Rule 9241(f) and 9269(a)(1) and deem the allegations in the Complaint against Respondent admitted pursuant to FINRA Rule 9269(a)(2).<sup>13</sup>

**E. Respondent Failed to Respond to Requests for Information and Documents**

FINRA Rule 8210 requires members and their associated persons to provide information and documents requested in FINRA investigations. Compliance with FINRA requests must be “full and prompt.”<sup>14</sup> The rule specifies that “[n]o 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.”<sup>15</sup>

The Securities and Exchange Commission (“SEC”) recognizes that FINRA Rule 8210 “is the principal means by which FINRA obtains information from member firms and associated persons in order to detect and address industry misconduct.”<sup>16</sup> The SEC considers the rule “essential to FINRA’s ability to investigate possible misconduct by its members and associated persons.”<sup>17</sup> Similarly, the National Adjudicatory Council (“NAC”) has characterized the rule’s importance as “paramount,”<sup>18</sup> because failing to provide information “frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.”<sup>19</sup> Thus, “[a] failure to comply with Rule 8210 is a serious violation because it subverts [FINRA’s] ability to execute its regulatory responsibilities.”<sup>20</sup>

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<sup>13</sup> Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

<sup>14</sup> *Dep’t of Enforcement v. North Woodward Financial Corp.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at \*10 (NAC July 19, 2016) (citing *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*15 (Jan. 30, 2009)). See also *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at \*18 (Nov. 8, 2007) (“As we have often noted, recipients of requests under [FINRA] Rule 8210 must promptly respond to the requests or explain why they cannot.”).

<sup>15</sup> FINRA Rule 8210(c).

<sup>16</sup> *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at \*55 n.46 (Sept. 24, 2015); see also *Dep’t of Enforcement v. Jarkas*, No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at \*46 (NAC Oct. 5, 2015), *sustained in relevant part*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285 (Apr. 1, 2016).

<sup>17</sup> *Mielke*, 2015 SEC LEXIS 3927, at \*54. This is especially true because FINRA lacks subpoena power. See *Fawcett*, 2007 SEC LEXIS 2598, at \*23 (stating that SROs lack subpoena power and instead must rely on Rule 8210 as a “vitaly important” tool to acquire information and satisfy an obligation to police the activities of its members and associated persons).

<sup>18</sup> *Dep’t of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at \*13 (NAC Feb. 18, 2016).

<sup>19</sup> *Id.*, at \*14 (citing *North Woodward Fin. Corp.*, 2014 FINRA Discip. LEXIS 32, at \*20).

<sup>20</sup> *Christopher A. Parris*, Exchange Act Release No. 78669, 2016 SEC LEXIS 3075, at \*3 (Aug. 24, 2016) (quoting *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 WL 3523186, at \*6 (Sept. 10, 2010)).

A violation of Rule 8210 also constitutes a violation of FINRA Rule 2010,<sup>21</sup> which states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

**1. Failure to Timely Respond to Requests for Information and Documents**

In order to investigate allegations disclosed in the Form U5, on July 17, 2015, FINRA’s Central Review Group (“CRG”) sent a letter to Respondent requesting pursuant to FINRA Rule 8210 that he provide information and documents regarding his alleged failure to comply with Invesco’s policies and procedures regarding expense reports and to disclose financial matters and an outstanding arrest warrant on his Form U4 (“First Request Letter”). The First Request Letter asked Respondent to provide the requested information no later than July 31, 2015. The First Request Letter warned Respondent that he was “obligated to respond to this request fully, promptly, and without qualification” and that “[a]ny failure on your part to satisfy these obligations could expose you to sanctions, including a permanent bar from the securities industry.” Respondent did not respond to the First Request Letter by the July 31 deadline.<sup>22</sup>

On August 3, 2015, CRG sent a letter to Respondent (“Second Request Letter”) noting that CRG had not received the information requested in the First Request Letter, reiterating the requests in the First Request letter, and setting a deadline of August 17, 2015. The Second Request Letter warned Respondent, “Failure to comply with this request may subject you to disciplinary action.” Respondent did not respond to the Second Letter Request by the August 17 deadline.<sup>23</sup>

CRG sent the First and Second Request Letters by certified mail and first-class mail to Respondent’s CRD Address.<sup>24</sup>

On October 26, 2015, CRG sent to Respondent a Notice of Suspension pursuant to FINRA Rule 9552 which enclosed copies of the First and Second Request letters. The Notice of Suspension informed Respondent that if he failed to comply with the requests by November 19, 2015, he would be suspended and that if he failed to comply with the requests by January 29, 2016, he would be barred. CRG sent the Notice of Suspension by certified mail and first-class

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<sup>21</sup> *Jarkas*, 2016 SEC LEXIS 1285, at \*27 (stating that FINRA Rule 0140 subjects associated persons to all rules applicable to FINRA members).

<sup>22</sup> Compl. ¶¶ 5-7, 9; CX-3, at 1.

<sup>23</sup> Compl. ¶¶ 10-11, 13; CX-5, at 1.

<sup>24</sup> Compl. ¶¶ 7, 11.

mail to Respondent's CRD Address and to another address obtained from public records ("Second Address").<sup>25</sup>

On November 19, 2015, Enforcement sent Respondent a letter notifying him that he was suspended pursuant to FINRA Rule 9552 and in accordance with the Notice of Suspension. Enforcement sent this letter by first-class mail and by certified mail to Respondent's CRD Address and the Second Address.<sup>26</sup>

More than two months later, on January 25, 2016, Respondent faxed a letter to Enforcement responding to the suspension. In this letter, he listed his CRD Address as his return address, provided a partial response to the First and Second Request Letters, and acknowledged that he had received the First and Second Request Letters in November 2015.<sup>27</sup>

On January 26, 2016, Enforcement informed Respondent that he had failed to respond to the paragraphs 3, 5, and 6 of the First Request Letter and that his response would not "be deemed complete" unless he responded to those specific items.<sup>28</sup>

Two days later, Respondent provided additional documents and information in response to the First and Second Request Letters. But, Respondent still had not fully complied with the First and Second Request Letters because he had failed to provide certain documents requested in the First and Second Request Letters. Nevertheless, FINRA lifted the suspension on February 2, 2016.<sup>29</sup>

Thus, Respondent violated FINRA Rules 8210 and 2010 by failing to fully and timely comply with the First and Second Request Letters.

## **2. Failure to Respond to Subsequent Requests for Information and Documents**

On July 26, 2016, FINRA staff spoke to Respondent, and he confirmed to FINRA staff that his CRD Address was his current address.<sup>30</sup> The next day, FINRA staff sent a letter to Respondent ("Third Request Letter") asking Respondent to provide certain documents and information pursuant to FINRA Rule 8210 no later than August 10, 2016. The Third Request Letter warned Respondent that any failure on his part to respond fully and promptly to the letter could expose him to sanctions, including a permanent bar from the securities industry. The Third

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<sup>25</sup> Compl. ¶ 15; CX-6. Rule 8210(d) provides that a notice issued under Rule 8210 shall be deemed received if it is sent to the person's last known business address as reflected in CRD and the staff does not have actual knowledge that that address is out of date or inaccurate.

<sup>26</sup> Compl. ¶¶ 16-17; CX-8.

<sup>27</sup> Compl. ¶ 18; CX-9.

<sup>28</sup> Compl. ¶ 19; CX-10.

<sup>29</sup> Compl. ¶¶ 20-21; CX-12.

<sup>30</sup> Compl. ¶ 27; CX-15.

Request Letter was sent by certified mail and first-class mail to Respondent's CRD Address. Respondent did not respond to the Third Request Letter by the August 10, 2016 deadline.<sup>31</sup>

On August 11, 2016, FINRA staff sent Respondent a fourth letter (the "Fourth Request Letter") asking, pursuant to FINRA Rule 8210, that he provide the documents and information that had been requested in the Third Request Letter.<sup>32</sup> This letter noted that FINRA staff had not received a response from Respondent and warned him that if he failed to deliver the requested information by August 25, 2016, he may be subject to the institution of an expedited or formal disciplinary proceeding leading to sanctions, including a bar from the securities industry. The Fourth Request Letter was sent by certified mail and first-class mail to Respondent's CRD Address. Respondent did not respond to the Fourth Request letter by the August 25, 2016 deadline.<sup>33</sup>

Thus, Respondent violated FINRA Rules 8210 and 2010 by failing to comply with the Third and Fourth Request Letters.

### **III. Sanctions**

I considered FINRA's Sanction Guidelines ("Guidelines") in considering the appropriate sanction to impose on Respondent.<sup>34</sup> Because Respondent's liability under both causes of action involves his failure to respond fully and timely to FINRA Rule 8210 requests, I aggregated them for purpose of sanctions, as authorized by the Sanction Guidelines.<sup>35</sup>

FINRA's Guidelines recommend that, if an individual did not respond in any manner, a bar in all capacities should be standard.<sup>36</sup> The Guidelines provide that where an individual has failed to provide a timely response, the adjudicator should consider suspending the individual in any or all capacities for up to two years. The Guidelines contain three principal considerations in determining sanctions for a failure to respond in a timely manner: (1) importance of the information requested as viewed from FINRA's perspective; (2) the number of requests made and the degree of regulatory pressure required to obtain a response; and (3) the length of time to respond.<sup>37</sup> The Guidelines advise that when "a respondent does not respond until after FINRA files a complaint, Adjudicators should apply the presumption that the failure constitutes a complete failure to respond."<sup>38</sup>

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<sup>31</sup> Compl. ¶¶ 28-29, 31; CX-16.

<sup>32</sup> Compl. ¶ 32; CX-18.

<sup>33</sup> Compl. ¶¶ 32-33, 35; CX-18.

<sup>34</sup> FINRA Sanction Guidelines (2017), <http://www.finra.org/Industry/Sanction-Guidelines>.

<sup>35</sup> Guidelines at 4 (General Principles Applicable to All Sanctions Determinations, No. 4).

<sup>36</sup> Guidelines at 33.

<sup>37</sup> Guidelines at 33.

<sup>38</sup> Guidelines at 33 n.1.

The Guidelines also provide that, where an individual provided 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.<sup>39</sup> 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.<sup>40</sup>

Here, Respondent eventually responded to FINRA staff's initial requests for information and documents. Thus, I applied the Guidelines for a failure to respond in a timely manner and for a partial, rather than complete, failure to respond.<sup>41</sup> The evidence reflects a number of aggravating factors. The information was important from FINRA's perspective. FINRA staff made a total of four requests. FINRA did not obtain any response to the First and Second Request Letters until Respondent had been suspended and the suspension was within days of converting into a bar. Respondent has not thoroughly explained valid reasons for his failure to respond more timely and fully to the First and Second Request Letters and to respond at all to the Third and Fourth Request Letters.

Thus, I conclude that the appropriate sanction is a bar in all capacities.

#### IV. Order

For violating FINRA Rules 8210 and 2010 by failing to respond fully and timely to requests for documents and information, Respondent Robert Blake Ellender is barred from associating with any FINRA member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Kenneth B. Winer  
Hearing Officer

Copies to:

Robert Blake Ellender (via overnight courier and first-class mail)  
Kathryn M. Wilson, Esq. (via email and first-class mail)  
David B. Klafter, Esq. (via email)  
Jeffrey D. Parisier, Esq. (via email)

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<sup>39</sup> Guidelines at 33.

<sup>40</sup> Guidelines at 33.

<sup>41</sup> See *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at \*55-56 (June 14, 2013).