

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CLAY EMERSON HOFFMAN
(CRD No. 4371162),

Respondent.

Disciplinary Proceeding
No. 2015045207702

Hearing Officer–DRS

DEFAULT DECISION

March 31, 2017

Respondent is barred in all capacities from association with any FINRA member firm for failing to respond to information requests.

Appearances

For the Complainant: Rebecca L. Segrest, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint against Respondent Clay Emerson Hoffman charging him with failing to respond to two information requests issued to him by FINRA. Enforcement served the Complaint on Hoffman but he failed to answer it. Accordingly, Enforcement filed a motion for entry of default decision (“Default Motion”).¹ Hoffman did not respond to the Default Motion. For the reasons set forth below, I find Hoffman in default, grant Enforcement’s Default Motion, and bar Hoffman from associating with any FINRA member firm in any capacity.

¹ The Default Motion (“Mot.”) is supported by a declaration from Enforcement counsel (hereafter “Decl. ¶ __”), a declaration from the primary examiner who conducted the examination (hereafter “Suppl. Decl. ¶ __”), and six exhibits (hereafter “CX-__”).

II. Findings of Fact and Conclusions of Law

A. Hoffman's Background

Hoffman entered the securities industry in 2001 and, over the next 15 years, was registered with five FINRA-member firms, including Summit Brokerage Services, Inc.² Beginning in May 2013, Hoffman was registered with Summit as a General Securities Representative (Series 7) and an Investment Company/Variable Contracts Principal (Series 26)³ until March 1, 2016, and, since then, he has not been associated with another FINRA-member firm.⁴ On May 10, 2016, FINRA revoked his registration for failing to pay fines and/or costs in another FINRA proceeding.⁵

B. FINRA's Jurisdiction

Enforcement filed the Complaint on November 1, 2016, within two years after the effective date of termination of his FINRA registration. The Complaint charges him with failing to respond to requests for information during the two-year period after the termination of his registration. Therefore, although Hoffman is not currently associated with a FINRA member, FINRA retains jurisdiction over him pursuant to Article V, Section 4(a) of FINRA's By-Laws.

C. Origin of the Investigation

The investigation that led to the filing of the Complaint arose from two customer arbitrations filed against Hoffman alleging that he had engaged in, among other things, unsuitable transactions, unauthorized transactions, excessive trading, and fraud.⁶

D. Hoffman's Default

In accordance with FINRA Rules 9131(b) and 9134(a) (2) and (b) (1), Enforcement served Hoffman with the Notice of Complaint and the Complaint, as well as the Second Notice of Complaint and the Complaint by U.S. Postal Service first-class certified mail at his residential address, as reflected in the Central Registration Depository ("CRD Address").⁷ Hoffman did not

² CX-1, at 3–4, 6.

³ CX-1, at 6.

⁴ CX-1, at 6; *see also* Decl. ¶ 10 (stating that Hoffman is no longer registered or associated with a FINRA member).

⁵ CX-1, at 15–19.

⁶ Decl. ¶ 4; Suppl. Decl. ¶¶ 4–6.

⁷ Decl. ¶¶ 11–14, 18; CX-1, at 1–2. Hoffman informed Enforcement two months before it filed the Complaint that the CRD Address was his current residential address. Decl. ¶ 12 n.6; Complaint ("Compl.") ¶ 29. Although FINRA Rules do not require that a respondent receive actual notice of the Complaint, here, Hoffman did have actual notice; the certified mail return receipts for both the First and Second Notices of Complaint were signed: "Clay Hoffman." Decl. ¶¶ 15, 19.

file an answer or otherwise respond to the Complaint.⁸ Accordingly, I find that Hoffman defaulted.⁹

E. Hoffman Violated FINRA Rules 8210 and 2010 by Failing to Provide Information Requested by FINRA

FINRA Rule 8210 requires members and their associated persons to provide information and documents requested in FINRA examinations and investigations. The Rule specifies that “[n]o member or person shall fail to provide information . . . pursuant to this Rule.”¹⁰ A violation of Rule 8210 also constitutes a violation of FINRA Rule 2010,¹¹ 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.”

The SEC recognizes that this Rule “is the principal means by which FINRA obtains information from member firms and associated persons in order to detect and address industry misconduct.”¹² The SEC considers the Rule “essential to FINRA’s ability to investigate possible misconduct by its members and associated persons.”¹³ And, thus, “[a] failure to comply with Rule 8210 is a serious violation because it subverts [FINRA’s] ability to execute its regulatory responsibilities.”¹⁴ Similarly, the National Adjudicatory Council characterizes the Rule’s importance as “paramount”¹⁵ because failing to provide information “frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.”¹⁶

Enforcement established that Hoffman violated FINRA Rules 8210 and 2010. Concerned that Hoffman was engaged in a pattern of unauthorized, unsuitable, and/or excessive trading,¹⁷ in

⁸ Decl. ¶ 22.

⁹ Hoffman is hereby notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

¹⁰ FINRA Rule 8210(c).

¹¹ *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285, at *27 (Apr. 1, 2016). FINRA Rule 0140 subjects associated persons to all rules applicable to FINRA members.

¹² *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*, 2016 SEC LEXIS 1285 (Apr. 1, 2016).

¹³ *Mielke*, 2015 SEC LEXIS 3927, at *54. This is especially true because FINRA lacks subpoena power. *See Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *23 (Nov. 8, 2007) (stating that SROs lack subpoena power and instead must rely on Rule 8210 as a “vitally important” tool to acquire information and satisfy an obligation to police the activities of its members and associated persons).

¹⁴ *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)).

¹⁵ *Dep’t of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *13 (NAC Feb. 18, 2016).

¹⁶ *Id.*, at *14 (citing *North Woodward Fin.*, 2014 FINRA Discip. LEXIS 32, at *20).

¹⁷ Suppl. Decl. ¶ 6.

April 2016, and in connection with its investigation, Enforcement sent Hoffman two requests for information and documents under FINRA Rule 8210. Enforcement sent the first request on April 8, 2016, and, when he did not respond, sent a second request to him on April 26, 2016.¹⁸ The requests sought information and documents concerning, among other things, transactions in a customer's account, Hoffman's dealings with that customer relating to his account, and Hoffman's cell phone records.¹⁹ Enforcement sent both requests to Hoffman at his CRD Address by first-class mail and first-class certified mail.²⁰ Hoffman did not respond to either request.²¹ As a result, Hoffman violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines")²² recommend that, if an individual did not respond in any manner, a bar should be standard. The Guidelines also recommend a fine of \$25,000 to \$73,000.²³ But, "[w]here mitigation exists," the Guidelines direct the adjudicator to "consider suspending the individual in any or all capacities for up to two years." In determining the appropriate sanction for a failure to respond, the Guidelines contain one Principal Consideration: the "[i]mportance of the information requested as viewed from FINRA's perspective."²⁴

Here, a bar in all capacities is appropriate. First, the conduct was serious, as Hoffman failed to respond to two Rule 8210 requests in connection with an investigation into potentially serious misconduct. Second, from the FINRA staff's perspective, the information sought was important in determining whether Hoffman had violated FINRA rules by (1) exercising discretion in customer accounts without written authorization; (2) engaging in unauthorized trading; (3) recommending unsuitable investments; and (4) engaging in excessive trading/churning. Further, according to the staff, the requested information was important in

¹⁸ Compl. ¶¶ 8, 13; CX-6; CX-7. Because I find Hoffman in default, I deem the allegations in the Complaint admitted under FINRA Rule 9269(a) (2).

¹⁹ Suppl. Decl. ¶¶ 11, 17.

²⁰ Compl. ¶¶ 10, 15; Suppl. Decl. ¶¶ 12, 15. By virtue of these mailings, Hoffman is deemed to have received the requests. Under Rule 8210(d), a notice issued under FINRA Rule 8210 shall be deemed received if it is mailed or otherwise transmitted to the last known residential address of the person as reflected in CRD and the staff does not have actual knowledge that the address in CRD is out of date or inaccurate. Here, the staff had no such knowledge. Compl. ¶29; Decl. ¶¶ 11–12.

²¹ Compl. ¶¶ 18, 31.

²² FINRA Sanction Guidelines (2016) ("Guidelines"), <http://www.finra.org/industry/sanction-guidelines>.

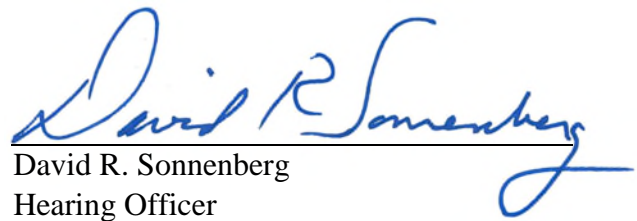
²³ Guidelines at 33.

²⁴ Guidelines at 33. Enforcement cites as aggravation "[t]he principal considerations in determining sanctions for failure to respond to a Rule 8210 request in a timely manner [which] indicate that the adjudicator should consider the number of requests and the degree of regulatory pressure required to obtain a response." Mot. at 7. These considerations, however, do not apply here; Hoffman's violation involved a complete failure to provide information, not a failure to respond in a timely manner. Guidelines at 33.

determining whether Hoffman's member firm employer, Summit, properly supervised him.²⁵ Third, because Hoffman failed to respond to the Rule 8210 requests, the staff was unable to investigate adequately whether he engaged in the rule violations under investigation and whether Summit properly supervised him.²⁶ Finally, the record does not reflect any mitigation.²⁷

IV. Order

For violating FINRA Rules 8210 and 2010 by failing to provide information requested by FINRA, Clay Emerson Hoffman is barred in all capacities from association with any FINRA member firm. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


David R. Sonnenberg
Hearing Officer

Copies to:

Clay Emerson Hoffman (*first-class mail and overnight courier*)
Rebecca L. Segrest, Esq. (*via email and first-class mail*)
David B. Klafter, Esq. (*via email*)
Jeffrey D. Pariser, Esq. (*via email*)

²⁵ Suppl. Decl. ¶ 18.

²⁶ Suppl. Decl. ¶19.

²⁷ Decl. ¶ 23. In light of the bar, I do not impose any monetary sanctions. *See* Guidelines at 10 (Monetary sanctions—Imposition and collection of monetary sanctions) (“Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss in cases involving the following types of misconduct: failure to respond under FINRA Rule 8210; and exam cheating.”).