

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PEYTON NELSON JACKSON
(CRD No. 1988387),

Respondent.

Disciplinary Proceeding
No. 2016049252901

Hearing Officer—KBW

DEFAULT DECISION

August 30, 2017

Respondent is barred from associating with any FINRA member firm in any capacity for failing to comply with multiple Rule 8210 requests.

For the Complainant: Jackie A. Wells, Esq., Andrew Beirne, Esq., and Lara C. Thyagarajan, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

In 2015 and 2016, several former customers of Respondent Peyton Nelson Jackson filed Statements of Claim against Respondent and the firms that had employed him, alleging, among other things, that he recommended unsuitable securities and engaged in fraud. FINRA's Department of Enforcement opened an investigation into the validity of these allegations ("the Investigation"). As part of the Investigation, Enforcement sent Respondent seven requests for documents, information, or testimony pursuant to FINRA Rule 8210. Respondent failed to comply with any of these requests.

Enforcement subsequently served Respondent with a Complaint charging that he violated FINRA Rules 8210 and 2010 by failing to comply with Rule 8210 requests. Respondent did not file an answer or otherwise respond to the Complaint. Accordingly, Enforcement filed a motion for entry of default decision ("Default Motion"), together with counsel's declaration ("Decl.") in support of the motion and supporting exhibits. 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 entered the securities industry in 1989 when he became registered with FINRA as a general securities representative. In 1991, Respondent also became registered as a general securities principal. Between 1991 and 2015, Respondent was registered as a general securities representative or general securities principal, or both, through associations with seven FINRA member firms. Respondent has not been registered with FINRA or associated with a FINRA member firm since April 24, 2015, when FINRA member firm Alexander Capital, L.P., filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), which disclosed that his association with the firm had been terminated.¹

Several of Respondent's former employing firms filed amended Forms U5 to disclose customer complaints against Respondent, internal reviews into Respondent's conduct, or both.² The last of these amended Forms U5 was filed on December 13, 2016, and reported that a customer had filed an arbitration claim (1) alleging that Respondent had engaged in fraud, recommended unsuitable securities, and engaged in other misconduct and (2) seeking compensatory damages of \$200,000.³

B. FINRA's Jurisdiction

FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA's By-Laws because Enforcement filed and served the Complaint during the two-year period after the filing of the last of the amended Forms U5 and the Complaint alleged that Respondent failed to comply with multiple Rule 8210 requests while he was subject to FINRA's jurisdiction.

C. Respondent's Default

Enforcement filed the Complaint against Respondent on April 18, 2017. Enforcement sent the Complaint and the Notice of Complaint by first-class and certified mail, return receipt requested, to a post office address that Respondent had confirmed as his then-current address in June 2016 ("P.O. Box Address") and to the business address of the attorney who represented Respondent at that time. However, because of a typographical error, Enforcement did not mail the Complaint to Respondent's last known residential address as reflected in the Central

¹ Complaint ("Compl.") ¶¶ 2, 3; CX-1, at 3; CX-2, at 1-2.

² Decl. ¶ 7; CX-1, at 13; CX-3; CX-4; CX-5.

³ Decl. ¶ 8; CX-3, at 2.

Registration Depository (“CRD Address”).⁴ To correct this, on April 24, 2017, Enforcement sent the First Amended Notice of Complaint and the Complaint by first-class and certified mail, return receipt requested, to Respondent’s CRD Address and P.O. Box Address and to the business address of Respondent’s attorney.⁵ When Respondent did not timely respond to the Complaint, Enforcement sent the Second Notice of Complaint and Complaint by first-class and certified mail, return receipt requested, to Respondent’s CRD Address and P.O. Box Address and to the business address of Respondent’s attorney.⁶ Thus, Enforcement served the Complaint on Respondent in accordance with FINRA rules.

Respondent did not file an answer or otherwise respond to the Complaint. Accordingly, the Hearing Officer finds that Respondent defaulted.⁷

D. Respondent Failed to Respond to Requests for Information

Rule 8210 requires members and their associated persons to provide information and documents requested in FINRA investigations. “[A] member firm and its associated persons have an obligation to respond to [FINRA’s] requests fully and promptly.”⁸ 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.”⁹

The Securities and Exchange Commission recognizes that 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.”¹⁰ The SEC considers the rule “essential to FINRA’s ability to investigate possible misconduct by its members and associated persons.”¹¹ Similarly, the National Adjudicatory Council (“NAC”) has characterized the rule’s importance as “paramount,”¹² because failing to provide information “frustrates [FINRA’s] ability to detect

⁴ Decl. ¶¶ 17, 18.

⁵ Decl. ¶ 18; CX-7.

⁶ Decl. ¶ 25; CX-11.

⁷ Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

⁸ *N. Woodward Fin. Corp.*, Exchange Act Release No. 72828, 2014 SEC LEXIS 2894, at *10 (Aug. 12, 2014) (quoting *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (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.”).

⁹ FINRA Rule 8210(c).

¹⁰ *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).

¹¹ *Mielke*, 2015 SEC LEXIS 3927, at *54.

¹² *Dep’t of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *13 (NAC Feb. 18, 2016).

misconduct, and such inability in turn threatens investors and markets.”¹³ Thus, “[a] failure to comply with Rule 8210 is a serious violation because it subverts [FINRA’s] ability to execute its regulatory responsibilities.”¹⁴

A violation of Rule 8210 also constitutes a violation of Rule 2010, 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.”

In the Investigation, Enforcement sent seven letters to Respondent pursuant to Rule 8210 between September 6, 2016, and December 19, 2016. In three letters, Enforcement requested that Respondent complete a questionnaire and appear for on-the-record (“OTR”) testimony. In three other letters, Enforcement requested that Respondent produce documents, including personal bank and brokerage account statements and certain email correspondence. And in the seventh letter, Enforcement requested that Respondent appear for OTR testimony but did not request that he complete a questionnaire. In each letter, Enforcement warned that a failure to comply could subject Respondent to sanctions.¹⁵

Enforcement sent the first five letters by first-class and certified mail, return receipt requested, to Respondent’s CRD Address and P.O. Box Address and the last two request letters by first-class and certified mail, return receipt requested, to the business address of Respondent’s counsel. Enforcement did not receive any requests from Respondent for an extension of any deadline or for adjournment of any OTR testimony.¹⁶ In early January 2017, Respondent’s counsel orally acknowledged that he had received the last two request letters.¹⁷

Respondent failed to comply with Rule 8210 requests.¹⁸ Thus, Respondent violated FINRA Rules 8210 and 2010.

¹³ *Id.* at *14 (citing *Dep’t of Enforcement v. N. Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *20 (NAC July 21, 2014), *aff’d*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015)).

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 SEC LEXIS 2988, at *21 (Sept. 10, 2010)).

¹⁵ Compl. ¶¶ 10, 11, 13, 17, 23; CX-16; CX-18; CX-22; CX-23; CX-28; CX-29.

¹⁶ Compl. ¶¶ 10, 11, 12, 13, 16, 17, 22, 23, 25; Decl. ¶ 48; CX-16; CX-18; CX-19; CX-22; CX-23; CX-28; CX-29. As agreed with Respondent’s counsel, FINRA staff emailed Respondent’s counsel a revised version of the third letter requesting that Respondent appear for OTR testimony. The revised version changed the date of the OTR testimony from the date specified in the initial Third OTR request. Compl. ¶ 19.

¹⁷ Compl. ¶ 24.

¹⁸ Compl. ¶¶ 12, 16, 22, 25. The record indicates that (1) Enforcement was aware by September 28, 2016, that Respondent was represented by counsel in the Investigation, CX-24, and (2) Enforcement subsequently sent at least two of the seven Rule 8210 requests to Respondent’s addresses but not to Respondent’s counsel. CX-22, at 1; CX-23, at 1. If any FINRA staff member responsible for mailing or otherwise transmitting Rule 8210 requests to Respondent knew that the Respondent was represented by counsel in the Investigation, it arguably was necessary for the requests to be mailed or otherwise transmitted to counsel in order to accomplish valid service under Rule

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend that, if an individual does not respond in any manner, a bar in all capacities should be standard.¹⁹ The conduct under investigation was serious. Respondent's failures to comply with the Rule 8210 requests impeded the Investigation.²⁰ Moreover, there are no mitigating factors present in this case.²¹ Thus, I conclude that the appropriate sanction is a bar in all capacities.

IV. Order

Respondent Peyton Nelson Jackson is barred from associating with any FINRA member firm in any capacity for failing to comply with multiple Rule 8210 requests 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.



Kenneth B. Winer
Hearing Officer

Copies to:

Peyton Nelson Jackson (via overnight courier and first-class mail)
Jackie A. Wells, Esq. (via email)
Andrew Beirne, Esq. (via email)
Lara C. Thyagarajan, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)

8210(d). Given that Enforcement transmitted notice of at least three of the requests to Respondent's counsel, I do not need to resolve whether Enforcement properly served the other Rule 8210 requests. CX-25, at 1; CX-28, at 1; CX-29, at 1.

¹⁹ FINRA Sanction Guidelines at 33 (2017), <http://www.finra.org/industry/sanction-guidelines>.

²⁰ Decl. ¶ 52.

²¹ Decl. ¶ 51.