

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

V.

SEAN WILLIAM KILLORAN
(CRD No. 4591890),

Respondent.

Disciplinary Proceeding
No. 20160491970-01

Hearing Officer–RES

DEFAULT DECISION

November 9, 2018

For failure to appear for on-the-record testimony, Respondent is barred from associating with any FINRA member firm in any capacity.

Appearances

For the Complainant: Daniel M. Hibshoosh, Esq., Lane Thurgood, Esq., and Richard Chin, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint alleging a single cause of action against Respondent Sean Killoran, formerly a registered representative, charging him with failure to appear and provide on-the-record testimony, in violation of FINRA Rules 8210 and 2010. After Enforcement filed the Complaint, Killoran failed to appear in two initial pre-hearing conferences. At my direction, Enforcement filed a motion for entry of default decision (“Default Motion”). Killoran did not file an opposition to the Default Motion. For the reasons stated below, I find Killoran in default, deem admitted all allegations in the Complaint, and grant the Default Motion.

II. Findings of Fact and Conclusions of Law

A. Killoran's Background

Sean Killoran entered the securities industry in September 2002 and has been associated with four FINRA-regulated broker-dealers.¹ In December 2011, Killoran became associated with Scotia Capital (USA), Inc. (“Scotia Capital”).² He registered as a General Securities Representative and Operations Professional in July 2013.³ On July 18, 2016, Scotia Capital filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) reporting that the firm had terminated Killoran’s employment as of June 20, 2016.⁴ The stated reason for the termination was unsatisfactory performance.⁵ Since then, Killoran has not been registered or associated with a FINRA member firm.⁶

B. Jurisdiction

This disciplinary proceeding meets the jurisdictional requirements of Article V, Section 4(a) of FINRA’s By-Laws. First, Enforcement filed the Complaint on June 21, 2018—within two years following Scotia Capital’s filing of the Form U5 on July 18, 2016.⁷ Second, the Complaint charges Killoran with failure to appear for on-the-record testimony within two years following the termination of his FINRA registration.⁸

C. Origin of the Investigation

In April 2016, FINRA opened an investigation into Killoran’s potential involvement in the mismarking of securities in a proprietary trading portfolio maintained by Scotia Capital.⁹

¹ Declaration of Daniel M. Hibshoosh in Support of Motion for Entry of Default Decision (“Decl.”) ¶ 4.

² Decl. ¶ 4.

³ Decl. ¶ 4.

⁴ Decl. ¶ 4.

⁵ Decl. ¶ 4.

⁶ Decl. ¶ 5.

⁷ Decl. ¶ 6.

⁸ Decl. ¶ 6.

⁹ Decl. ¶ 7; Complaint (“Compl.”) ¶ 9.

D. Killoran's Default

Enforcement filed and served the Complaint on June 21, 2018.¹⁰ Killoran did not file an answer.¹¹ Enforcement filed and served the Second Notice of Complaint on July 25, 2018.¹² On August 1, 2018, Killoran sent an email to the Office of Hearing Officers, stating: "I deny all allegations against me. Please provide and [sic] date, time and location for my deposition. This is my formal response."¹³

Although Killoran's email did not comply with FINRA Rule 9215(b), on August 15, 2018, I issued an order accepting the email as Killoran's answer.¹⁴ I then issued a notice of receipt of answer and order scheduling the initial pre-hearing conference ("IPHC") to be held by telephone on August 28, 2018, at 10:00 a.m. (Eastern Time).¹⁵ When the IPHC convened on the scheduled date and time, Killoran failed to appear.¹⁶

The next day, I issued an order rescheduling the IPHC for September 6, 2018, at 10:00 a.m. (Eastern Time).¹⁷ When the rescheduled IPHC convened on the scheduled date and time, Killoran again failed to appear.¹⁸ I find that Killoran's failure to appear for the IPHC and the rescheduled IPHC is a violation of FINRA Rule 9269, and that Killoran has defaulted in this proceeding.

E. Killoran's Failure to Appear Warrants Issuance of a Default Decision

FINRA Rule 9241 provides that "[t]he Hearing Officer may issue a default decision, pursuant to FINRA Rule 9269, against a Party that fails to appear ... at a pre-hearing conference of which the Party has due notice."¹⁹ Killoran had due notice of the IPHC and the rescheduled IPHC. The Office of Hearing Officers sent him orders scheduling these conferences. He was warned of the possible consequences of not appearing. In the order for the IPHC, I informed him that "[t]he parties are reminded that a failure to appear at the Conference, in person or through counsel or a representative, may be deemed a default" and, in the order for the rescheduled IPHC, I stated that "Respondent is hereby notified that his failure to appear in the rescheduled

¹⁰ Decl. ¶ 11.

¹¹ Decl. ¶ 12.

¹² Decl. ¶ 13.

¹³ Decl. ¶ 15.

¹⁴ I also ordered Killoran to file an amended answer that complied with FINRA Rule 9215(b).

¹⁵ Decl. ¶ 17.

¹⁶ Decl. ¶ 17.

¹⁷ Decl. ¶ 17.

¹⁸ Decl. ¶ 17.

¹⁹ FINRA Rule 9241(f).

IPHC, in person or through counsel, will result in his default.” I find a default decision against Killoran is warranted.²⁰

When a respondent defaults through failure to appear in a pre-hearing conference, FINRA Rule 9269 authorizes the Hearing Officer to treat the allegations in the Complaint as admitted.²¹ As described below, I find that Killoran committed the violation charged in the Complaint, and impose a bar from associating in any capacity with any FINRA member firm.

F. Killoran Fails to Appear for On-The-Record Testimony in Violation of FINRA Rules 8210 and 2010

FINRA Rule 8210 confers on FINRA staff the right to “require a member, person associated with a member, or any person subject to FINRA’s jurisdiction ... to testify ... with respect to any matter involved in [an] investigation.”²² The Rule further provides that “[n]o member or person shall fail to provide information or testimony ... pursuant to this Rule.”²³ Thus, failure to appear for on-the-record testimony as requested by FINRA is a violation of FINRA Rules 8210 and 2010.²⁴

Enforcement staff served Killoran with a letter under FINRA Rule 8210 requiring him to appear and provide testimony on May 15, 2018.²⁵ Enforcement sent the letter by certified mail return receipt requested and first-class mail to Killoran’s New York address of record reflected in the Central Registration Depository (“CRD Address”) and to an address in Florida that Killoran had provided to Enforcement staff as his current residence (“Home Address”).²⁶ Enforcement

²⁰ Killoran is hereby notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

²¹ FINRA Rule 9269(a)(2). In addition, Killoran failed to file an answer that complied with FINRA Rule 9215(b), in violation of my August 15, 2018 order. Because of that failure, on August 30, 2018, I issued an order deeming all paragraphs of the Complaint admitted. Killoran’s failure to file a rule-compliant answer may be considered a default. *Dep’t of Enforcement v. King*, No. 201504444801, 2017 FINRA Discip. LEXIS 31, at *14 (NAC July 20, 2017) (affirming a default decision where, among other things, the respondent “did not file a compliant answer, despite the Hearing Officer’s issuance of two orders instructing him to do so”).

²² FINRA Rule 8210(a).

²³ FINRA Rule 8210(c); *accord Dep’t of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *41-42 (NAC July 24, 2017) (“FINRA Rule 8210 requires a registered person to respond fully, completely, and truthfully to a request for information from FINRA”), *appl. for review dismissed*, Exchange Act Release No. 82970, 2018 SEC LEXIS 823 (Mar. 30, 2018).

²⁴ *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *26 (NAC June 3, 2014) (the respondent “violated FINRA Rules 8210 and 2010 when he failed to appear at three scheduled on-the-record interviews and testify”), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015). A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010. *Evansen*, 2014 FINRA Discip. LEXIS 10, at *24 n.23.

²⁵ Compl. ¶ 10.

²⁶ Compl. ¶ 10. Enforcement also sent the request to Killoran’s email address. Compl. ¶ 10.

staff spoke with Killoran by telephone on May 11, 2018, to confirm he intended to appear for testimony.²⁷ Yet in disregard of the request, Killoran did not appear on May 15, 2018.²⁸

On May 15, 2018, Enforcement served Killoran with a second letter under FINRA Rule 8210 requiring him to appear on May 22, 2018.²⁹ Enforcement sent the request by certified mail return receipt requested and first-class mail to Killoran's CRD Address and Home Address.³⁰ In disregard of the second request, Killoran did not appear for testimony.³¹ Killoran's failure to appear and provide testimony violated FINRA Rules 8210 and 2010.

III. Sanctions

According to FINRA's Sanction Guidelines ("Guidelines"), the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.³² The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

The Principal Considerations include aggravating factors that apply here. By failing to appear for on-the-record testimony, Killoran attempted to delay FINRA's investigation and concealed information from FINRA.³³ His failure to appear was the result of an intentional act.³⁴ I do not find Scotia Capital's termination of Killoran's registration to be mitigating because it was for Killoran's unsatisfactory performance, not his failure to appear for testimony. The termination has not materially reduced the likelihood of Killoran's continued misconduct in the future.³⁵

With regard to a violation of FINRA Rule 8210, the Guidelines recommend that, "[i]f the individual did not respond in any manner, a bar should be standard."³⁶ The adjudicator should

²⁷ Compl. ¶ 11.

²⁸ Compl. ¶ 10.

²⁹ Compl. ¶ 13.

³⁰ Compl. ¶ 13. Enforcement also sent the request to Killoran's email address. Compl. ¶ 13.

³¹ Compl. ¶ 14.

³² Guidelines at 2 (General Principle No. 1) (May 2018), <http://www.finra.org/industry/sanction-guidelines>.

³³ Guidelines at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA's investigation or conceal information from FINRA).

³⁴ Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence).

³⁵ Guidelines at 5 (General Principle No. 7).

³⁶ Guidelines at 33.

consider a fine of \$25,000 to \$73,000.³⁷ The single consideration specific to a FINRA Rule 8210 violation is the importance of the information requested as viewed from FINRA's perspective.³⁸

Here, the withheld information was important: by failing to appear for testimony, Killoran prevented Enforcement from examining the extent and scope of his potential involvement in the mismarking of securities in a proprietary trading portfolio maintained by Scotia Capital. All of the relevant considerations weigh against Killoran. For his failure to appear for testimony, I bar Killoran from associating with any FINRA member firm in any capacity. I do not impose a fine.³⁹

IV. Order

Respondent Sean Killoran failed to appear for on-the-record testimony, in violation of FINRA Rules 8210 and 2010. For this violation, he is barred from associating with any FINRA member firm in any capacity. The bar shall be effective immediately if this Decision becomes FINRA's final action in this disciplinary proceeding.



Richard E. Simpson
Hearing Officer

Copies to:

Sean William Killoran (via email, first-class mail, and overnight courier)
Daniel M. Hibshoosh, Esq. (via email and first-class mail)
Lane Thurgood, Esq. (via email)
Richard Chin, Esq. (via email)
Lara Thyagarajan, Esq. (via email)

³⁷ Guidelines at 33.

³⁸ Guidelines at 33.

³⁹ Guidelines at 10 (“Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss”).