

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DOUGLAS A. LEONE
(CRD No. 2453784),

Respondent.

Disciplinary Proceeding
No. 2016052560002

Hearing Officer–MJD

DEFAULT DECISION

April 23, 2018

Respondent is barred from associating with any FINRA member firm in any capacity for failing to attend an on-the-record interview during an investigation, in violation of FINRA Rules 8210 and 2010.

For the Complainant: Michael Perkins, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For Respondent: No appearance.

DECISION

The Department of Enforcement opened an investigation into Respondent Douglas A. Leone’s (“Respondent”) potential unsuitable recommendations and excessive trading in customer accounts. Pursuant to FINRA Rule 8210, Enforcement twice requested that Respondent appear at an on-the-record interview (“OTR”) to provide testimony. Respondent did not appear. For violating FINRA Rules 8210 and 2010, Respondent is barred from associating with any FINRA member firm in any capacity.

Enforcement properly served Respondent with two Notices of Complaint and the Complaint. Respondent did not file an Answer to the Complaint. On March 29, 2018, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Michael Perkins (“Perkins Decl.”) and 30 exhibits (CX-1 through CX-30). Respondent did not respond to the Default Motion.

Thus, I grant Enforcement’s Default Motion and deem the facts alleged in the Complaint admitted pursuant to FINRA Rule 9215(f) and 9269(a). For the reasons set forth below, I find Respondent in default.

I. Findings of Fact and Conclusions of Law

A. Background

Respondent first became associated with a FINRA member firm in 1993. He was registered with Salomon Whitney LLC as a General Securities Representative from March 2013 to March 22, 2017, when the firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) to terminate his registration.¹

B. Jurisdiction

Respondent was last registered with FINRA on March 22, 2017.² Although he is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA’s By-Laws because (i) the Complaint was filed within two years of the termination of Respondent’s registration, and (ii) the Complaint charges him with failing to comply with requests for information that FINRA staff issued during the two-year period following the termination of his FINRA registration.

C. Origin of the Investigation

Enforcement initiated its investigation into Respondent in 2016 after learning of possible unsuitable recommendations and excessive trading in his customers’ accounts.³ The investigation led to the filing of the Complaint in this matter.

D. Respondent Defaulted by Failing to Answer the Complaint

Enforcement served Respondent with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on January 9, 2018, and the Complaint and Second Notice of Complaint on February 8, 2018.⁴ In each case, Enforcement served Respondent by first-class certified mail addressed to his last known residential address recorded in FINRA’s Central Registration Depository (“CRD”).⁵ Thus, Respondent received valid constructive notice of this proceeding.⁶

¹ Perkins Decl. ¶¶ 5-7; CX-1, at 1-2, 16; CX-2.

² Perkins Decl. ¶¶ 8-9; CX-2.

³ Perkins Decl. ¶ 10.

⁴ Perkins Decl. ¶¶ 12-13, 18; CX-3; CX-7.

⁵ Perkins Decl. ¶¶ 13, 18; CX-1, at 1; CX-3, at 1; CX-6; CX-7, at 1. Enforcement represents that it is unaware of any address for Respondent other than the one reported in CRD. Perkins Decl. ¶ 22. Enforcement also emailed copies of the Complaint and the First and Second Notices of Complaint to an email address Respondent had provided. Perkins Decl. ¶¶ 14, 18; CX-4; CX-8.

⁶ See, e.g., *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 n.21 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

Pursuant to Rule 9215, Respondent's Answer was due by February 26, 2018. Respondent did not file an Answer to the Complaint and Second Notice of Complaint. Thus, Respondent is in default.

On February 27, 2018, I issued an Order instructing Enforcement to file a Default Motion. On March 29, 2018, Enforcement filed a Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,⁷ and deem the allegations in the Complaint admitted.

E. The Charges and Applicable Rules

The Complaint contains one cause of action. It alleges that Respondent violated FINRA Rules 8210 and 2010 by twice failing to attend an OTR to provide sworn testimony, in April and August 2017.

Rule 8210 requires persons subject to its jurisdiction to provide information to FINRA upon request. Rule 8210 is considered to be among FINRA's most important tools for investigating potential wrongdoing.⁸ "FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain information concerning an associated person's securities-related business ventures."⁹ Furthermore, "[a]ssociated persons therefore must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material."¹⁰

Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction to "provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation." 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." 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 Rule 8210 for a person to fail to provide information sought by FINRA.

⁷ Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

⁸ 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).

⁹ *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

¹⁰ *Id.* at *13 (citing *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009)).

1. Respondent Failed to Appear at April 2017 OTR

On March 22, 2017, Enforcement sent Respondent a letter, pursuant to Rule 8210, requesting that he appear for an OTR at FINRA's offices in New York City on April 5, 2017. Enforcement mailed the request to Respondent at his last known residential address recorded in CRD.¹¹

On April 3, 2017, two days before the scheduled OTR, Respondent called and emailed Enforcement to request a postponement of the OTR. On April 4, 2017, Enforcement and Respondent agreed to re-schedule the OTR for April 24, 2017.¹² The same day, Enforcement sent Respondent a letter, pursuant to Rule 8210, requesting that he appear for an OTR at FINRA's offices in New York City on April 24, 2017.¹³ Enforcement mailed the request to Respondent at his last known residential address recorded in CRD. Respondent did not appear for his interview on April 24, 2017.¹⁴

2. Enforcement Filed an Expedited Proceeding Under Rule 9552 Suspending Respondent

On May 3, 2017, Enforcement served Respondent with a Notice of Suspension ("Notice"), pursuant to FINRA Rule 9552. As required by Rule 9552(c), the Notice informed Respondent that if he failed to take corrective action to comply with the requests to attend an OTR by May 30, 2017, he would be suspended. The Notice also informed Respondent that if he failed to request termination of suspension within three months of the date of the Notice he would be automatically barred effective August 7, 2017, from associating with any FINRA member in any capacity. The Notice was sent to Respondent at this last known residential address recorded in CRD.¹⁵

On May 30, 2017, Enforcement sent Respondent a Suspension of Association Letter, pursuant to Rule 9552, notifying him that as of that date, he was suspended from associating with any FINRA member in any capacity. The Suspension of Association Letter was sent to Respondent at his last known residential address recorded in CRD.¹⁶

¹¹ Perkins Decl. ¶¶ 25-28; CX-10; CX-12.

¹² Perkins Decl. ¶¶ 29-30.

¹³ Perkins Decl. ¶ 31; CX-13. Enforcement also emailed the April 4, 2017, Rule 8210 letter to Respondent. CX-14.

¹⁴ Perkins Decl. ¶ 33.

¹⁵ Perkins Decl. ¶¶ 34-35; CX-15; CX-16; CX-17. The Notice also informed Respondent that, pursuant to Rule 9552(f), he could request termination of suspension on the grounds of full compliance with the Notice. The Notice further informed him that, under Rule 9552(e), he could request a hearing with FINRA's Office of Hearing Officers. Enforcement also emailed the Notice to Respondent. CX-15, at 1, 15.

¹⁶ Perkins Decl. ¶¶ 38-39; CX-18. Enforcement also emailed the Suspension of Association Letter to Respondent. CX-19. The letter also informed Respondent that, pursuant to Rule 9552(h), his suspension would automatically convert to a bar on August 7, 2017, if he did not request a termination of suspension on the grounds of full compliance with the Notice.

Only July 27, 2017, Respondent replied to the Suspension of Association Letter. He emailed Enforcement to request termination of his suspension. He did not propose a date that he would appear for testimony.¹⁷ On August 4, 2017, Enforcement sent Respondent a Denial of Request for Termination of Suspension Letter, pursuant to Rule 9552(f), stating that, because he did not show good cause, FINRA would not grant his request to terminate his suspension. Enforcement's letter also told Respondent that he would remain suspended until he appeared for testimony.¹⁸

3. Respondent Failed to Appear at August 2017 OTR

On August 9, 2017, Enforcement sent Respondent a letter, pursuant to Rule 8210, requesting that he appear for an OTR at FINRA's offices in New York City, on August 24, 2017. Enforcement mailed the letter to the last known address of Respondent as recorded in CRD.¹⁹ Respondent did not appear for the OTR on August 24, 2017.²⁰

4. Conclusion

Under the terms of the May 3, 2017, Notice of Suspension and pursuant to Rule 9552(h), Respondent was automatically barred effective August 7, 2017, because of his failure to fully comply with the Notice. In any event, two days after that date, Enforcement served Respondent with another request to appear at an OTR on August 24, 2017. Respondent failed to appear at the OTR.

By failing to provide testimony at an OTR, as alleged in the Complaint, Respondent violated FINRA Rules 8210 and 2010.²¹

II. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend that if an individual does not respond in any manner to a request for information a bar in all capacities should be standard.²² The Guidelines further provide that when an individual fails to respond the principal

¹⁷ Perkins Decl. ¶ 43; CX-22.

¹⁸ Perkins Decl. ¶ 44; CX-23. Enforcement sent the Denial Letter to Respondent at his last known address as recorded in CRD and via email. CX-24. Thirty minutes after Enforcement emailed the Denial Letter, Respondent emailed Enforcement to ask that it reconsider its denial. He did not state that he would appear for an OTR or suggest a day for the OTR. CX-26.

¹⁹ Perkins Decl. ¶¶ 47-49; CX-27; CX-30. Enforcement also emailed a copy of the Rule 8210 letter to Respondent. CX-28.

²⁰ Perkins Dec. ¶ 51.

²¹ FINRA Rule 2010 requires a member to "observe high standards of commercial honor and just and equitable principles of trade." It is well-established that a violation of Rule 8210 is also a violation of Rule 2010. *See CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *29-30; *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999).

²² FINRA Sanction Guidelines at 33 (2017), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

consideration in determining sanctions is the importance of the information requested as viewed from FINRA's perspective.²³

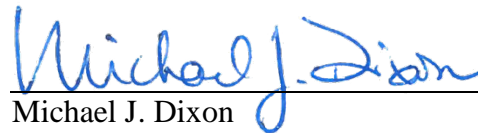
FINRA needed the information requested to perform its regulatory function to fully investigate potential misconduct. Enforcement was investigating allegations that Respondent had engaged in unsuitable recommendations and excessive trading in the accounts of multiple customers. Respondent's failure to provide sworn testimony prevented FINRA from fulfilling its regulatory responsibilities.²⁴ The evidence reveals no excuse for Respondent's failure to respond to FINRA's requests.

I find that there are no mitigating factors. Thus, the appropriate sanction is a bar in all capacities.

III. Order

Respondent Douglas A. Leone is barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010.

The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Michael J. Dixon
Hearing Officer

Copies to:

Douglas A. Leone (*via overnight courier and first-class mail*)

Michael Perkins, Esq. (*via email and first-class mail*)

Jeffrey D. Pariser, Esq. (*via email*)

²³ *Id.*

²⁴ *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at *19-20 (NAC Aug. 12, 2004) (finding that a person who fails to respond to FINRA requests for information subverts FINRA's regulatory responsibilities).