

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SAMUEL RYAN MCCLAIN
(CRD No. 1555602),

Respondent.

Disciplinary Proceeding
No. 20150455320-02

Hearing Officer—KBW

DEFAULT DECISION

January 10, 2017

Respondent is barred from associating with any FINRA member firm in any capacity for failing to appear and provide investigative testimony, in violation of FINRA Rules 8210 and 2010.

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

For the Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) sent multiple letters to Respondent Samuel Ryan McClain requesting that he appear and provide on-the-record testimony as part of an investigation into an allegation that he failed to make certain required disclosures on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”). He did not appear and provide testimony in response to these requests.

On August 10, 2016, Enforcement served the Complaint on Respondent. The Complaint alleges that Respondent violated FINRA Rules 8210 and 2010 by failing to appear and provide testimony pursuant to FINRA Rule 8210. Respondent has not filed an answer 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 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 entered the securities industry in July 2014. From January 2015 to July 2015, Respondent was associated with FINRA member firm Northwestern Mutual Investment Services, LLC (the "Firm") as an Investment Company Products/Variable Contracts Representative. On July 8, 2015, the Firm filed a Uniform Termination Notice for Securities Industry Registration (the "Form U5") stating that Respondent was permitted to resign while under investigation for failing to disclose, among other things, a prior judgment against him.¹

Respondent is no longer registered with FINRA or associated with a FINRA member firm.²

B. FINRA's Jurisdiction

FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint against Respondent 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 testimony during the two-year period after the termination of his registration.

C. Origin of the Investigation

After the Firm filed the Form U5, FINRA opened an investigation concerning Respondent's alleged failure to make multiple disclosures on his Form U4.³

D. Respondent's Default

Enforcement served Respondent with the Complaint, Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and Notice of Complaint on August 10, 2016, and the Complaint and Second Notice of Complaint on September 9, 2016. Each time, Enforcement served Respondent by certified mail, return receipt requested, sent to his last residential address recorded in the Central Registration Depository ("CRD address") and to an address in Beverly, Massachusetts that Respondent provided to Enforcement in January 2016 as his most current residential address ("Beverly address").⁴

¹ Complaint ("Compl.") ¶¶ 1, 5-6; CX-1, at 3; Decl. ¶ 4.

² Decl. ¶ 5.

³ Decl. ¶¶ 6-7.

⁴ Decl. ¶¶ 9, 11, 15.

Respondent did not file an answer or otherwise respond to the Complaint.⁵ Accordingly, I find that Respondent defaulted.⁶

E. Respondent Failed to Respond to Requests for Testimony

FINRA Rule 8210 authorizes FINRA staff to require a person subject to FINRA's jurisdiction to provide testimony with respect to any matter involved in an investigation, examination, or proceeding.

On December 21, 2015, Enforcement mailed a letter to Respondent's CRD address pursuant to FINRA Rule 8210, requesting that he appear to provide testimony at FINRA's New York office on January 15, 2016. The December 21 letter was returned to the staff with a forwarding address in North Reading, Massachusetts ("North Reading address"). On January 6, 2016, Enforcement mailed a letter to Respondent's North Reading address again requesting that he appear to provide testimony at FINRA's New York office on January 15, 2016. The January 6 letter was also returned to Enforcement.⁷

On January 12, 2016, Enforcement telephoned Respondent to inquire about his current address, and he provided the Beverly address.⁸

On January 13, 2016, Enforcement mailed letters to both Respondent's CRD address and Beverly address requesting, pursuant to FINRA Rule 8210, that he appear to provide testimony at FINRA's New York office on February 17, 2016. On January 30, 2016, Respondent emailed Enforcement asking that his testimony, scheduled for February 17, 2016, be adjourned. On February 1, 2016, Enforcement emailed Respondent, agreeing to adjourn his testimony until March 2, 2016. Respondent responded by email on the same day, thanking the staff for the extension. Respondent failed to appear and provide testimony on March 2, 2016.⁹

The day that Respondent failed to appear for testimony, Enforcement mailed a letter to both Respondent's CRD address and his Beverly address requesting, pursuant to FINRA Rule 8210, that he appear to provide testimony at FINRA's New York office on March 10, 2016. Respondent did not appear and provide testimony on March 10, 2016.¹⁰

By failing to comply with Enforcement's Rule 8210 requests that he appear and provide testimony, Respondent violated FINRA Rules 8210 and 2010.

⁵ Decl. ¶¶ 14, 18.

⁶ Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

⁷ Compl. ¶¶ 15-16.

⁸ Compl. ¶ 17.

⁹ Compl. ¶¶ 18-22.

¹⁰ Compl. ¶¶ 23, 25.

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend that, if an individual did not respond in any manner to a Rule 8210 request, a bar in all capacities should be standard.¹¹ The conduct under investigation was serious. Moreover, there are no mitigating factors present in this case. 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 appear and provide investigative testimony, Respondent Samuel Michael McClain 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:

Samuel Michael McClain (via overnight courier, email, and first-class mail)
Daniel M. Hibshoosh, Esq. (via email)
Eric Hansen, Esq. (via email)
Richard Chin, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)

¹¹ FINRA Sanction Guidelines at 33 (2016), <http://www.finra.org/industry/sanction-guidelines>.