

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ELLEN VRATORIC
(CRD No. 2345611),

Respondent.

Disciplinary Proceeding

No. 2016049420501

Hearing Officer–LOM

DEFAULT DECISION

June 1, 2018

For twice failing to provide sworn testimony requested pursuant to FINRA Rule 8210, Respondent is barred from association in any capacity with any FINRA member.

For the Complainant: Melissa Turitz, Esq., Sara Raisner, Esq., and Gina Petrocelli, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a Complaint alleging that Respondent, Ellen Vratoric, violated FINRA Rules 8210 and 2010 by failing twice to appear to give sworn testimony at an on-the-record interview (“OTR”), after having been properly served with notice. Vratoric filed an Answer.

Although she filed an Answer, Vratoric twice failed to appear for a pre-hearing conference after being properly served with notice. The circumstances indicate that, even though she was informed that a failure to appear could result in her being deemed in default, her failure to appear at both of the pre-hearing conferences was intentional and not mere inadvertence.

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. Vratoric did not respond to the motion.

For the reasons set forth below, I grant Enforcement’s Default Motion. I find Vratoric in default under FINRA Rule 9269(a)(1) for twice failing to appear at a pre-hearing conference held pursuant to FINRA Rule 9241 of which she had due notice.

Accordingly, pursuant to FINRA Rule 9269(a)(2), I deem the allegations in the Complaint against Vratoric admitted. Those allegations establish that Vratoric twice failed to appear for an OTR with FINRA staff after having been properly served with notice pursuant to FINRA Rule 8210. As a result, I find she violated FINRA Rules 8210 and 2010, as alleged in the Complaint, and, consistent with FINRA’s Sanction Guidelines, bar her from associating in any capacity with any FINRA member firm.¹

II. Findings of Fact and Conclusions of Law

A. Respondent

Vratoric joined the securities industry in approximately March 1993, and, from then until March 2016, she was associated with seven FINRA member firms. In the course of her career in the securities industry, she held the following securities licenses: Series 6 (Investment Company and Variable Contracts Products Representative), Series 63 (Uniform Securities Agent State Law Exam), Series 7 (General Securities Representative), Series 65 (Uniform Investment Advisor), and Series 24 (General Securities Principal).²

Vratoric has not been associated with any FINRA member since March 29, 2016.³

B. Jurisdiction

FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of her FINRA registration, and the Complaint charges her with misconduct committed while she was associated with a FINRA member and with failing to respond to requests for information during the two-year period after the termination of her registration.⁴

C. Respondent’s Termination

Vratoric’s last FINRA member employer, The Huntington Investment Company (the “Firm”), terminated her. On March 29, 2016, the Firm filed with FINRA a Uniform Termination Notice for Securities Industry Registration (“Form U5”), reporting that her termination was effective March 16, 2016. The Form U5 alleged that Vratoric had violated “the Firm’s policy on

¹ Respondent is notified that she may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

² Decl. ¶ 8.

³ Decl. ¶¶ 10-11.

⁴ Decl. ¶ 11.

document integrity along with an excessive number of complaints within the prescribed time period.”⁵

In April 2016, the Firm filed an amended Form U5 disclosing that Vratoric had been discharged after a routine branch review in which a compliance specialist had allegedly discovered a document integrity issue related to a variable annuity purchase. The amended Form U5 stated that “the signature page on the document was undated, there appeared to be use of white out and the signature page appeared to be re-used.”⁶

In June 2016, the Firm filed a second amended Form U5 reporting that one of Vratoric’s former customers had complained that she had transferred his money into a variable annuity without his authorization. The customer also alleged that Vratoric failed to disclose the risk that the variable annuity could lose value, that he was required to take a required minimum distribution from the annuity, and that selling bank certificates of deposit (“CDs”) to fund the variable annuity prior to the CDs’ maturity would result in penalties.⁷

Additional customers complained about Vratoric’s sales of variable and fixed annuities.⁸

D. Commencement of FINRA Staff Investigation

FINRA staff began investigating the allegations contained in Vratoric’s Form U5. On April 22, 2016, the staff sent her requests for documents and information pursuant to FINRA Rule 8210. Those requests were sent to her address as listed in FINRA’s Central Registration Depository (Vratoric’s “CRD Address”). She responded to the Rule 8210 requests on April 27, 2016.⁹

On October 24, 2016, FINRA staff sent Vratoric additional requests for documents and information pursuant to FINRA Rule 8210. These also were sent to Vratoric’s CRD Address. She responded on November 2, 2016.¹⁰ Vratoric confirmed by mail that day that her CRD Address was her current residential address.¹¹

⁵ Decl. ¶¶ 4, 9-10.

⁶ Decl. ¶ 5.

⁷ Decl. ¶ 6.

⁸ Compl. ¶¶ 11-25; Decl. ¶ 39.

⁹ Decl. ¶ 7; Compl. ¶ 8.

¹⁰ Compl. ¶ 9.

¹¹ Decl. ¶ 12, n.8.

Enforcement describes Vratovic's responses to these Rule 8210 requests as "limited,"¹² but it did not charge in its Complaint that her responses to these requests were deficient.

E. Vratovic Twice Fails to Appear for Sworn Testimony Requested Pursuant to FINRA Rule 8210

After reviewing the documents Vratovic provided in response to the April and October 2016 Rule 8210 requests, and attempting to contact some of her former customers, FINRA staff sought sworn testimony from her.¹³

On September 15, 2017, the staff sent her a letter pursuant to FINRA Rule 8210 (the "First Request Letter") requesting that she appear and provide testimony under oath on October 19, 2017. That letter informed her that she was obligated to appear and give testimony and advised her that a failure to provide information requested by the staff could violate Rule 8210 and lead to disciplinary action. Like the earlier letters seeking documents, which Vratovic received and responded to, the First Request Letter was sent by first-class mail to Vratovic's CRD Address.¹⁴

Vratovic received the First Request Letter, as she acknowledged in responding to the staff. She engaged in email correspondence regarding the OTR on Wednesday, October 11, 2017, left a voice mail regarding the OTR on Saturday, October 14, 2017, and discussed the OTR with FINRA staff in a telephone call on Monday, October 16, 2017. In both the voice mail and in her telephone call with the staff, Vratovic stated her intention not to appear to give testimony. Vratovic failed to appear at her OTR on October 19, 2017.¹⁵

On November 1, 2017, FINRA staff sent Vratovic a second letter pursuant to FINRA Rule 8210 (the "Second Request Letter"). Like the other requests for information, the Second Request Letter was sent by first-class mail to Vratovic's CRD Address. The letter requested that she appear and provide sworn testimony on November 9, 2017.¹⁶

Vratovic failed to appear at her OTR on November 9, 2017.¹⁷

¹² Decl. ¶ 44.

¹³ Compl. ¶¶ 11-25; Decl. ¶¶ 39-45.

¹⁴ Compl. ¶¶ 11-13. The First Request Letter was also sent by certified mail with return receipt requested and to an email address that Vratovic had used to communicate with FINRA staff on several occasions. Compl. ¶ 13.

¹⁵ Compl. ¶¶ 17-19.

¹⁶ Compl. ¶¶ 20-21. In addition, the Second Request Letter was sent by certified mail with return receipt requested and to Vratovic's email address. Compl. ¶ 21.

¹⁷ Compl. ¶ 25.

F. The Initiation of This Proceeding

On December 22, 2017, Enforcement filed its one-count Complaint alleging that Vratovic's two failures to appear for an OTR violated FINRA Rules 8210 and 2010.¹⁸ It served Vratovic at her CRD Address.¹⁹

On January 17, 2018, the Office of Hearing Officers received a letter in narrative form from Vratovic. It showed that a copy was sent to Enforcement.²⁰

On January 23, 2018, the Hearing Officer then assigned to the case accepted Vratovic's letter as an Answer.²¹

G. Respondent Twice Fails to Appear at a Pre-Hearing Conference

At the same time that he accepted Vratovic's letter as an Answer, the Hearing Officer entered an Order setting an initial pre-hearing conference for February 8, 2018, at 2 p.m. The Order cautioned that "a failure to appear at the Conference, in person or through counsel or a representative, may be deemed a default." It was served on Respondent by first-class mail addressed to her CRD Address and sent to her by email.²²

Between late January and early February, Enforcement made multiple attempts to meet and confer with Vratovic regarding potential hearing dates and other matters necessary to the conduct of the proceeding. It also sent her its first production of documents and invited her to contact the staff. Vratovic did not respond to any of these overtures.²³

As scheduled, the Hearing Officer convened the pre-hearing conference on February 8, 2018. Vratovic did not appear. She did not inform the Office of Hearing Officers in advance that she would be unable to attend. The Office made attempts to contact her but was unsuccessful. The Hearing Officer adjourned the conference.²⁴

Without excusing Vratovic's failure to appear at the first scheduled pre-hearing conference, the Hearing Officer issued an Order setting a new date for the pre-hearing conference. The new date was February 15, 2018, at 2 p.m. In this Order, the Hearing Officer once again reminded the parties that a failure to appear at the pre-hearing conference in person,

¹⁸ Compl. ¶¶ 1-26.

¹⁹ Decl. ¶ 4; Certificate of Service attached to Complaint.

²⁰ Answer at 1-3.

²¹ Notice of Receipt of Answer and Order Setting Initial Pre-Hearing Conference.

²² Notice of Receipt of Answer and Order Setting Initial Pre-Hearing Conference; Decl. ¶¶ 20-21.

²³ Decl. ¶¶ 22-26.

²⁴ Decl. ¶ 27; Order Rescheduling Initial Pre-Hearing Conference.

or through a representative, might be deemed a default. The Order was served on Vratoric by first-class mail addressed to her CRD Address, and also sent by email.²⁵

Two days before the rescheduled pre-hearing conference was set to occur, the Office received a call from someone purporting to be Respondent's husband. Among other things, he stated that Respondent would not appear at the pre-hearing conference and was not interested in participating in the proceeding.²⁶

The Hearing Officer then issued an Order rescheduling the pre-hearing conference for March 2, 2018, to allow time to hear directly from Vratoric or her attorney, if she should retain one. The Order repeated the reminder that a failure to appear at the pre-hearing conference could result in a default.²⁷ Enforcement once again made attempts to meet and confer with Vratoric, but she did not respond.²⁸

Vratoric failed to appear at the March 2, 2018 initial pre-hearing conference.²⁹

H. Respondent Defaulted

FINRA Rule 9269(a)(1) authorizes a Hearing Officer to issue a default decision against a respondent who has failed to appear at a pre-hearing conference of which the respondent has due notice. In this case, each time the Hearing Officer scheduled the pre-hearing conference, he issued an Order notifying the parties of the date and time and how to connect to the telephone conference; and, each time, the Order was served in compliance with FINRA Rules 9132 and 9134. The Orders were served on Vratoric by first-class mail addressed to her CRD Address. There is no evidence that her CRD Address is not valid. This is sufficient to conclude that Vratoric had due notice.

Indeed, there are circumstances indicating that Vratoric actually received the Orders but made a conscious decision each time not to participate in the scheduled pre-hearing conference. The man purporting to be her husband in the telephone call to the Office of Hearing Officers specifically stated that Vratoric did not want to participate in the proceeding. And, despite multiple efforts by Enforcement to contact her prior to each scheduled pre-hearing conference to discuss matters such as proposed hearing dates, Vratoric did not respond. Beyond sending the letter that was treated as an Answer, Vratoric has failed to participate in the proceeding in any manner. Moreover, she failed twice to appear at a pre-hearing conference even though she was informed that such a failure to appear could result in a default.

²⁵ Decl. ¶ 28; Order Rescheduling Initial Pre-Hearing Conference.

²⁶ Decl. ¶ 30; Second Order Rescheduling Initial Pre-Hearing Conference.

²⁷ Decl. ¶ 31; Second Order Rescheduling Initial Pre-Hearing Conference.

²⁸ Decl. ¶¶ 32-34.

²⁹ Decl. ¶ 35.

I find Vratoric in default.

I. Respondent Violated FINRA Rules 8210 and 2010

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210(a)(1), FINRA may require an associated person “to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation” in connection with any investigation.

Rule 8210(c) is unequivocal—it requires compliance with a Rule 8210 request. It provides that “[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule.”

The Rule is unequivocal for a reason. It is crucial to FINRA’s ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.³⁰ Rule 8210 “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations” and “is at the heart of the self-regulatory system for the securities industry.”³¹ A failure to respond promptly and completely to information requests frustrates FINRA’s ability to detect misconduct and protect investors and markets.³²

Rule 8210(d) provides that notice of a request pursuant to Rule 8210 is deemed received by a formerly associated person if it is sent to the person’s last known residential CRD address, unless the staff responsible for the mailing has actual knowledge that the address is out of date or no longer current. As noted above, at approximately the same time that Enforcement served the

³⁰ See, e.g., *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff’d*, 57 S.E.C. 330 (2004) (“It is well established that because NASD [FINRA’s predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”) (citation omitted); *Joseph G. Chiulli*, 54 S.E.C. 515, 523 (2000) (noting that Rule 8210 provides a means for NASD to effectively conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information). See also *Morton Bruce Erenstein*, 316 F. App’x 865, 871 (11th Cir. 2008) (“[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power.”); *Robert Fitzpatrick*, 55 S.E.C. 419, 423-25 & nn.10 & 16 (2001) (“[I]n order for the NASD [FINRA’s predecessor] to carry out its regulatory functions, it must have the full and prompt cooperation of persons associated with members when requests for information are made.”), *aff’d*, 63 F. App’x 20 (2d Cir. 2003).

³¹ *Dep’t of Enforcement v. Saliba*, No. 2013037522501, 2017 FINRA Discip. LEXIS 50, at *69 (OHO Dec. 15, 2017) (quoting *Dep’t of Enforcement v. Texas E&P Partners, Inc.*, No. 2014040501801, 2016 FINRA Discip. LEXIS 59, at *66-67 (OHO Dec. 13, 2016) and *North Woodward Fin. Corp.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *9-10 (NAC July 19, 2016)). See also *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993); *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

³² *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied*, 566 F.3d 1172 (D.C. Cir. 2009).

Rule 8210 requests at issue, on November 2, 2016, Vratovic confirmed that her CRD Address was current. There is no evidence in the record that her CRD Address was not current.

Pursuant to Rule 8210, FINRA staff sent the First Request Letter to Vratovic's CRD Address. In fact, it is apparent that she actually received the request. She subsequently discussed it with FINRA staff by email and telephone. Enforcement also sent the Second Request Letter to Vratovic's CRD Address. That she failed to respond to the Second Request Letter makes no difference. She is deemed to have received it.

I find that Vratovic violated FINRA Rule 8210 by her failure—twice—to appear and provide sworn testimony sought pursuant to that Rule when she received the required service of notice. Vratovic's failure to appear either time she received a Rule 8210 request for her sworn testimony, was, each time, a complete failure to respond. I do not regard Vratovic's production of "limited" information in response to two earlier Rule 8210 requests as partial responses to the separate, later requests for her to appear for OTR testimony.

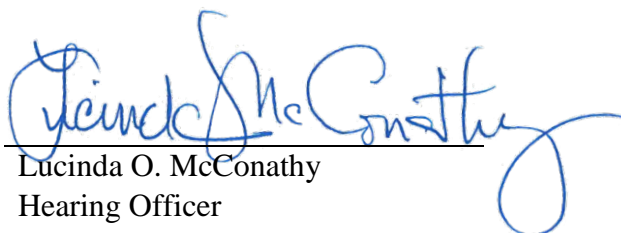
In addition, I find that she violated FINRA Rule 2010. It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.³³

III. Sanctions

For a complete failure to respond to a FINRA Rule 8210 request, FINRA's Sanction Guidelines recommend that a bar in all capacities should be standard.³⁴ Accordingly, I conclude that the appropriate sanction is a bar in all capacities.

IV. Order

Respondent, Ellen Vratovic, twice failed to appear for sworn testimony requested under FINRA Rule 8210, thereby violating both that Rule and FINRA Rule 2010. For that misconduct, she is barred from associating in any capacity with any FINRA member firm. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Lucinda O. McConathy
Hearing Officer

³³ See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 n.36 (Jan. 30, 2009); *Stephen J. Gluckman*, 54 S.E.C. 175, 185.

³⁴ FINRA Sanction Guidelines at 33 (2017), <http://www.finra.org/industry/sanction-guidelines>.

Copies to:

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