

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROGER LEE ARNOLD
(CRD No. 5284151),

Respondent.

Disciplinary Proceeding
No. 2021072142202

Hearing Officer–RES

DEFAULT DECISION

May 16, 2023

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents as required by FINRA Rule 8210.

Appearances

For Complainant: Yah Demann, Esq., John Luburic, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

FINRA’s Department of Enforcement filed a Complaint against Respondent Roger Lee Arnold, formerly a registered representative of a FINRA member firm. In a single cause of action, the Complaint alleges that Respondent failed to respond to three FINRA requests for information and documents under FINRA Rule 8210.¹ According to the Complaint, Respondent violated FINRA Rules 2010 and 8210.²

After Enforcement served Respondent with the Complaint and the First and Second Notices of Complaint, Respondent failed to file an Answer. At my direction, Enforcement filed a motion for entry of default decision (“Default Motion”). Enforcement’s Default Motion is supported by the declaration of counsel Yah Demann, Esq. (“Demann Decl.”) and 16 supporting

¹ Complaint (“Compl.”) ¶ 1.

² Compl. ¶ 42.

exhibits (CX-1 through CX-16). Respondent did not file an opposition or otherwise respond to the Default Motion. For the reasons stated below, I find Respondent in default, deem admitted all allegations in the Complaint, grant the Default Motion, and issue this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Background

According to the Central Registration Depository (“CRD”), Respondent first registered with FINRA in 2007. Respondent was registered as an Investment Company and Variable Contracts Representative through his association with PFS Investments, Inc. (“PFS”), a FINRA member firm, until August 2, 2021.³ On that date, PFS filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that the firm had terminated his registration.⁴ The Form U5 stated that Respondent had “admitted to redeeming money from his wife’s account with the firm and transferring it to a joint bank account without his wife’s permission.”⁵ Respondent resigned while he was under review by the firm.⁶ Respondent is not now registered with FINRA or associated with a FINRA member firm.⁷

B. Jurisdiction

Respondent remains subject to FINRA’s jurisdiction under Article V, Section 4 of FINRA’s By-Laws for the purpose of this proceeding because the Complaint (1) was filed within two years after the effective date of termination of Respondent’s registration through a FINRA member firm, and (2) charges Respondent with failing to respond to requests for information and documents made in the two-year period after the date on which he ceased to be registered or associated with a FINRA member firm.⁸

C. Origin of the Investigation

The investigation originated from Respondent’s Form U5, which disclosed that Respondent had resigned from his employer firm while the firm investigated one or more unauthorized redemptions and transfers of funds from his wife’s account with the firm.⁹

³ Compl. ¶ 2.

⁴ Compl. ¶ 3.

⁵ *Id.*

⁶ *Id.*

⁷ Demann Decl. ¶ 7.

⁸ Compl. ¶ 4.

⁹ Demann Decl. ¶ 4.

D. Respondent's Default

Enforcement properly served Respondent with the Complaint and the First and Second Notices of Complaint by mailing them to Respondent's last known residential address as reflected in CRD, in accordance with FINRA Rule 9134(a)(2) and (b)(1).¹⁰ Respondent failed to answer or otherwise respond to the Complaint by March 20, 2023, the deadline in the Second Notice of Complaint, or at any other time.

Based on these facts, I find Respondent in default for his failure to answer the Complaint. FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who fails to answer the complaint within the time afforded under FINRA Rule 9215.¹¹ Respondent had the opportunity to file an Answer but did not. I find a default decision warranted.¹² Once I find Respondent in default, I am authorized by FINRA Rules 9215(f) and 9269(a)(2) to treat the allegations of the Complaint as admitted. As described below, I find that Respondent committed the violations charged in the Complaint.

E. Respondent Failed to Provide Information and Documents, in Violation of FINRA Rules 8210 and 2010

1. Governing Law

Enforcement charges Respondent with violating FINRA Rules 8210 and 2010 because he failed to provide information and documents as directed by three FINRA Rule 8210 requests.¹³ FINRA Rule 8210 requires an associated person to provide information and documents requested by FINRA:

For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to . . . require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding . . . 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.¹⁴

¹⁰ Demann Decl. ¶¶ 13, 25.

¹¹ FINRA Rule 9269(a)(1).

¹² Respondent is notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

¹³ Compl. ¶¶ 6, 10, 15.

¹⁴ FINRA Rule 8210(a)(1) and (c).

FINRA’s examination authority under FINRA Rule 8210 is unequivocal and unqualified.¹⁵ FINRA Rule 8210 requires an associated person to provide full and prompt cooperation to FINRA.¹⁶ Because FINRA does not have subpoena power, the Rule provides FINRA the means to obtain information necessary to conduct investigations.¹⁷ A person formerly associated with a FINRA member firm must respond to a FINRA Rule 8210 request issued within two years after the termination of his registration through that firm.¹⁸ A violation of FINRA Rule 8210 also violates FINRA Rule 2010.¹⁹

2. Facts Showing a Violation

Beginning in August 2021, FINRA staff investigated the circumstances of Respondent’s resignation from his employer firm.²⁰ In that investigation, FINRA staff sent a FINRA Rule 8210 request directing Respondent to provide information and documents related to his resignation and his alleged unauthorized withdrawal of funds from his wife’s account.²¹ The United States Postal Service (“USPS”) reported that a copy of this FINRA Rule 8210 request had been delivered to and signed for at Respondent’s CRD address.²² Yet Respondent provided no information or documents to FINRA in response to the request.²³

FINRA staff sent Respondent two more FINRA Rule 8210 requests (the “second and third requests”). The following facts pertain to these requests:

- FINRA issued the second request because Respondent had failed to respond to the first request.²⁴

¹⁵ *Dep’t of Enforcement v. DreamFunded Marketplace, LLC*, No. 2017053428201, 2021 FINRA Discip. LEXIS 24, at *64 (NAC Sept. 27, 2021), *appeal docketed*, No. 3-20639 (SEC Oct. 27, 2021).

¹⁶ *DreamFunded Marketplace*, 2021 FINRA Discip. LEXIS 24, at *26.

¹⁷ *Dep’t of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *14 (NAC May 26, 2021), *appeal docketed*, No. 3-20380 (SEC July 1, 2021).

¹⁸ *Bradley C. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *14 (Jan. 21, 2022).

¹⁹ *Howard Brett Berger*, Exchange Act Release No. 58590, 2008 SEC LEXIS 3141, at *2 n.2 (Nov. 14, 2008) (“A violation of another NASD rule, such as Rule 8210, constitutes a violation of Conduct Rule 2110.”), *petition for review denied*, 347 F. App’x 692 (2d Cir. 2009); *Dep’t of Enforcement v. Meyers Assoc., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *13 n.13 (NAC Jan. 4, 2018) (“A violation of any FINRA rule constitutes also a violation of FINRA Rule 2010.”), *aff’d*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869 (July 26, 2019).

²⁰ Compl. ¶ 5.

²¹ Compl. ¶ 6.

²² Compl. ¶ 8.

²³ Compl. ¶ 9.

²⁴ Compl. ¶ 10.

- One day before Respondent’s response to the second request was due, Respondent requested that his response deadline be extended.²⁵ FINRA agreed to an extension.²⁶ Still, Respondent provided no information or documents to FINRA.²⁷
- FINRA issued the third request because Respondent had failed to respond to the first two requests.²⁸
- Respondent failed to provide any information or documents in response to the third request.²⁹
- The day after the third request’s response deadline, Respondent contacted FINRA staff by telephone to request a deadline extension.³⁰ FINRA extended Respondent’s deadline.³¹ Still, Respondent provided no information or documents.³²
- To sum up: Respondent never produced any information or documents in response to the FINRA Rule 8210 requests.³³

I find that Respondent failed to respond to three FINRA Rule 8210 requests. Respondent’s failure to produce the requested information and documents impeded FINRA’s investigation and deprived it of material information. I find that Respondent violated FINRA Rules 8210 and 2010.

F. The Notices of Suspension and FINRA Rule 9552(h)

On May 17, 2022, FINRA staff sent Respondent a Notice of Suspension informing him that, under FINRA Rule 9552, in 21 days, he would be suspended from associating with any FINRA member firm in any capacity for his failure to respond to the FINRA Rule 8210 requests.³⁴ FINRA served the Notice of Suspension on Respondent in accordance with

²⁵ Compl. ¶ 13.

²⁶ *Id.*

²⁷ Compl. ¶ 14.

²⁸ Compl. ¶ 15.

²⁹ Compl. ¶ 19.

³⁰ Compl. ¶ 20.

³¹ Compl. ¶ 21.

³² *Id.*

³³ Compl. ¶¶ 9, 14, 21.

³⁴ Compl. ¶ 22.

applicable FINRA Rules.³⁵ Respondent did not take any corrective action in response to this notification.³⁶ FINRA sent Respondent a second Notice of Suspension notifying him that he was in fact suspended from associating with any FINRA member firm in any capacity.³⁷ This Notice of Suspension warned Respondent that he would be automatically barred if, within three months of issuance of the original Notice of Suspension, he failed to request termination of his suspension on the ground of full compliance with the FINRA Rule 8210 requests.³⁸ FINRA served the Notice of Suspension on Respondent in accordance with applicable FINRA Rules.³⁹ Respondent personally signed for the certified mailing of the Notice of Suspension at a USPS office in Salem, Oregon.⁴⁰

Because of these two Notices of Suspension, Respondent was suspended from associating with any FINRA member firm in any capacity as of June 10, 2022.⁴¹ Respondent failed to request termination of his suspension on the ground of full compliance with the FINRA Rule 8210 requests. According to FINRA Rule 9552(h), three months after a respondent's suspension goes into effect, it automatically converts into a bar. Specifically, FINRA Rule 9552(h) provides that “[a] member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will *automatically* be expelled or barred.”⁴² Thus, it appeared to me that, as of August 22, 2022, Respondent was barred from associating with any FINRA member firm in any capacity.

My view of Respondent's barred status was supported by evidence. Respondent's CRD reported that his FINRA Rule 9552 suspension “[c]ontinues until required information is provided to FINRA *or the suspension converts to a bar.*”⁴³ On the next page, the CRD stated that “[i]f Arnold fails to request termination of the suspension within three months of the date of the Notice of Suspension, *he will automatically be barred on August 22, 2022* from association with any FINRA member in all capacities pursuant to FINRA Rule 9552(h).”⁴⁴ Respondent's Broker Check report stated the same thing.⁴⁵

³⁵ Compl. ¶ 23.

³⁶ Compl. ¶ 27.

³⁷ Compl. ¶ 28.

³⁸ *Id.*

³⁹ Compl. ¶ 29.

⁴⁰ Compl. ¶ 31.

⁴¹ Compl. ¶¶ 22, 28.

⁴² FINRA Rule 9552(h) (emphasis added).

⁴³ CX-1, at 11 (emphasis added).

⁴⁴ CX-1, at 12 (emphasis added).

⁴⁵ “If Arnold fails to request termination of the suspension within three months of the date of the Notice of Suspension, *he will automatically be barred on August 22, 2022* from association with any FINRA member in all capacities pursuant to FINRA Rule 9552(h).” CX-16, at 11 (emphasis added).

Before I wrote this Default Decision, I issued an order directing Enforcement to file a supplemental memorandum of law stating the reasons why it is necessary and appropriate to impose an additional bar on Respondent. In Enforcement’s supplemental memorandum of law, it states that FINRA filed a Form U6 on June 10, 2022, imposing an “indefinite suspension” on Respondent for his failure to respond to requests for information issued under FINRA Rule 8210. According to Enforcement, Respondent’s suspension did *not* automatically convert into a bar. Instead (again according to Enforcement), Respondent has been left in a state of “indefinite suspension” because FINRA failed to file a Form U6 imposing a bar against Respondent, and because FINRA otherwise failed to notify him that he in fact had been barred under FINRA Rule 9552(h).

III. Sanctions

FINRA’s Sanction Guidelines provide that 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.⁴⁶ The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

The Sanction Guideline for Failure to Respond to Requests Made Pursuant to FINRA Rule 8210 recommends a fine of \$10,000 to \$50,000.⁴⁷ A bar is standard.⁴⁸ The consideration specific to this Guideline is the importance of the information requested as viewed from FINRA’s perspective.⁴⁹ Because failure to comply with a FINRA Rule 8210 request subverts FINRA’s ability to execute its regulatory function, it is a serious violation justifying a stringent sanction.⁵⁰ It is aggravating if a respondent ignores several FINRA Rule 8210 requests over several months.⁵¹

The subjects about which Respondent failed to provide a response were important as viewed from FINRA’s perspective. I have read the three FINRA 8210 requests served on Respondent.⁵² These requests directed Respondent to provide a detailed explanation describing the circumstances in which he had been permitted to resign from his employer firm. They directed him to describe the circumstances in which he redeemed mutual funds in his wife’s

⁴⁶ FINRA Sanction Guidelines (“Guidelines”) at 2 (Sept. 2022) (General Principle No. 1), <https://www.finra.org/industry/sanction-guidelines>.

⁴⁷ Guidelines at 93.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *50-52 (Sept. 24, 2015).

⁵¹ *Dep’t of Enforcement v. Escobio*, No. 2018059545201, 2021 FINRA Discip. LEXIS 3, at *25 (NAC Mar. 10, 2021), *appeal docketed*, No. 3-20260 (SEC Apr. 7, 2021).

⁵² CX-3; CX-4; CX-5.

securities account. They required that Respondent state whether his wife had provided him with authority to execute the mutual fund redemptions. Respondent was called on to produce a copy of any written statement he had provided to his employer firm in its internal investigation.

Only Respondent could provide critical information about the alleged transactions. Although FINRA made three FINRA Rule 8210 requests, it did not receive the information and documents requested.

The Principal Considerations include aggravating factors that apply to Respondent's violation. Respondent failed to accept responsibility for his misconduct.⁵³ He tried to delay FINRA's investigation and to conceal information.⁵⁴ His misconduct was intentional.⁵⁵ There are no mitigating factors.

As I state above, it appeared to me that Respondent is already barred for his failure to respond to the FINRA Rule 8210 requests, by the automatic operation of the two Notices of Suspension and FINRA Rule 9552(h). In Enforcement's supplemental memorandum of law, it contends that Respondent is *not* barred because FINRA failed to file a Form U6 imposing a bar against him or otherwise notify him that he in fact was barred under FINRA Rule 9552(h). I do not find this argument to be persuasive because it seems to be inconsistent with the plain language of FINRA Rule 9552, which provides that "[a] member or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will *automatically* be expelled or barred."⁵⁶

In any event, the applicable Sanction Guideline provides that a bar is standard for a failure to respond to FINRA Rule 8210 requests.⁵⁷ I bar Respondent because I am directed to do so by the Sanction Guideline.⁵⁸ I do not impose a fine.⁵⁹

⁵³ Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct to a regulator before detection and intervention by the regulator).

⁵⁴ Guidelines at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA's investigation or to conceal information from FINRA).

⁵⁵ *Id.* (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence).

⁵⁶ FINRA Rule 9552(h) (emphasis added).

⁵⁷ Guidelines at 93.

⁵⁸ *But see* Guidelines at 3 (General Principle No. 3: "Sanctions in disciplinary proceedings are intended to be remedial and to prevent the recurrence of misconduct"); *Dep't of Enforcement v. Tranchina*, No. 201805888501, 2023 FINRA Discip. LEXIS 3 (NAC Mar. 23, 2023) ("a FINRA bar may be imposed, not as punishment, but as a means of protecting investors"), *appeal docketed*, No. 3-21390 (SEC Apr. 20, 2023).

⁵⁹ *See* Guidelines at 9 ("Adjudicators may exercise their discretion in applying FINRA's policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA's regulatory purposes.").

IV. Order

Respondent Roger Lee Arnold is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents as directed by three FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010. A bar for such misconduct is standard.

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

SO ORDERED.



Richard E. Simpson
Hearing Officer

Copies to:

Roger Lee Arnold (via email, first-class mail, and overnight courier)
Yah Demann, Esq. (via email)
John Luburic, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)