FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. MICHAEL CHARLES GRANDE (CRD No. 1219255), Respondent.	Disciplinary Proceeding No. 2018060128401 Hearing Officer–BDC **AMENDED DEFAULT DECISION**[1] August 16, 2024

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide information requested in connection with a FINRA investigation, in violation of FINRA Rules 8210 and 2010.

Appearances

For the Complainant: Isaiah Sakany, Esq., Albert A. Starkus, III, Esq., Rebecca Carvalho, Esq., and Michael Manly, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a Complaint against Respondent Michael Charles Grande alleging that he failed to provide information that FINRA requested in connection with an investigation into whether certain mutual fund recommendations he made to customers were suitable. As a result, the Complaint alleged, Grande violated FINRA Rules 8210 and 2010. When Grande failed to answer the Complaint, the original Hearing Officer in this matter ordered Enforcement to file a motion for entry of a default decision supported by a memorandum of law and a declaration.[2]

On July 12, 2024, Enforcement filed its motion for entry of a default decision ("Default Motion") along with a memorandum of law, a declaration from Enforcement Counsel Isaiah

[1] This Decision is amended to correct case citations in footnotes 21 and 38.

[2] The Chief Hearing Officer reassigned this matter to me on July 17, 2024.

Sakany, Esq. ("Sakany Decl."), and ten exhibits (CX-1 through CX-10) in support of the Default Motion. Grande did not respond to the Default Motion.

For the reasons set forth below, I grant the Default Motion, deem the allegations in the Complaint admitted, and bar Grande from associating with any FINRA member in any capacity.

II. Findings of Fact and Conclusions of Law

A. Background

Grande first became registered with FINRA through his association with a FINRA member firm in March 1984 and remained registered with FINRA through associations with numerous FINRA member firms until May 31, 2022.[3] He was registered with Newbridge Securities Corporation as a General Securities Representative from November 2005 until May 31, 2022, when Newbridge filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that Grande had voluntarily terminated his association with the firm.[4]

B. Jurisdiction

Grande has not been registered with a FINRA member firm since May 31, 2022.[5] 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 (1) Enforcement filed the Complaint within two years of the effective date of the Form U5 that terminated Grande's association with a member firm, and (2) the Complaint charges him with failing to comply with requests for information issued by FINRA staff within two years of the termination of his registration.[6]

C. Origin of the Investigation

FINRA commenced an investigation of Grande's recommendations to customers to engage in short-term mutual fund trading.[7] As part of its investigation, FINRA sought information from Grande regarding his sales of mutual funds to his customers.[8]

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[3] Complaint ("Compl.") ¶ 2; Sakany Decl. ¶ 5; CX-1, at 5–12.

[4] Compl. ¶¶ 2–3; Sakany Decl. ¶¶ 4–5; CX-1, at 2; CX-2.

[5] Compl. ¶ 4; Sakany Decl. ¶ 6; CX-1, at 1–2.

[6] Compl. ¶ 5; Sakany Decl. ¶ 8.

[7] Compl. ¶ 12; Sakany Decl. ¶ 9; CX-3.

[8] Compl. ¶ 13; Sakany Decl. ¶ 9; CX-3.

D. Respondent Defaulted by Failing to Answer the Complaint

Enforcement served Grande with the First and Second Notices of Complaint and the Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the First Notice of Complaint and Complaint on April 24, 2024,[9] and the Second Notice of Complaint and Complaint on May 23, 2024.[10] In each case, Enforcement served Grande by United States Postal Service ("USPS") first-class certified mail at his last known residential address recorded in the Central Registration Depository ("CRD").[11] Grande therefore received valid constructive notice of this proceeding.

Pursuant to FINRA Rule 9215, Grande was required to file an Answer or otherwise respond to the Complaint by June 10, 2024. Grande did not respond to the Complaint. As a result, I find Grande in default and deem the allegations in the Complaint admitted under FINRA Rules 9215(f) and 9269(a)(2).[12]

E. Governing Law

The Complaint charges Grande with violating FINRA Rule 8210. This rule requires persons subject to FINRA's jurisdiction to provide information to FINRA upon request for the purpose of an investigation, complaint, examination, or proceeding.[13] 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 [an] investigation . . . that is in such . . . person's possession, custody, or control." Rule 8210(c) provides that "[n]o 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."

Constructive notice of the request, not actual notice of it, "is all that FINRA Rule 8210 demands."[14] Under Rule 8210, a formerly registered person is deemed to have received a FINRA Rule 8210 request if it was mailed or otherwise transmitted to their "last known residential address . . . as reflected in [CRD]."[15] If the FINRA staff responsible for sending the request actually knows "that the address in [CRD] is out of date or inaccurate" and knows of another

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[9] Sakany Decl. ¶ 21; CX-5.

[10] Sakany Decl. ¶ 27; CX-8.

[11] Sakany Decl. ¶¶ 21, 27; CX-5; CX-8. Enforcement also sent the First and Second Notices of Complaint and Complaint to Respondent via USPS first-class mail and Grande's email addresses. Sakany Decl. ¶¶ 21, 28. Enforcement has no actual knowledge that the CRD address is out of date. Sakany Decl. ¶ 19.

[12] Grande is notified that he may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

[13] FINRA Rule 8210(a), (c).

[14] *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *36 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

[15] FINRA Rule 8210(d).

"more current address," then it must also mail or transmit a copy of the request to that other address.[16]

Rule 8210 "is at the heart of the self-regulatory system for the securities industry."[17] It "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."[18] The rule "is unequivocal and grants FINRA broad authority to obtain information concerning an associated person's securities-related business ventures."[19] Associated persons must cooperate fully in providing FINRA with information.[20] It is therefore a violation of Rule 8210 for a person to fail to provide information sought by FINRA.[21]

Grande is also charged with violating FINRA Rule 2010, which requires a FINRA member "in the conduct of its business" to "observe high standards of commercial honor and just and equitable principles of trade."[22] This Rule also applies to persons associated with a member, as they "have the same duties and obligations as a member under the Rules."[23] It is well established that "[a] violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010."[24]

F. Grande Failed to Provide Information Requested Under FINRA Rule 8210

On November 13, 2023, FINRA staff sent Grande a letter pursuant to Rule 8210 requesting information related to various mutual fund transactions that Grande recommended to

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[16] *Id.*

[17] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009).

[18] *Id.* (quoting *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993)).

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

[20] *See CMG Inst'l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (member firms and their associated persons have an obligation to respond to FINRA's request for information "fully and promptly"). *See also Dep't of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20 (NAC May 15, 2019) (Rule 8210 "requires associated persons to comply fully with FINRA's requests for information, testimony, and documents with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.").

[21] *See Dep't of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *20 (NAC May 26, 2021) (respondent violated Rule 8210 by failing to produce his Internal Revenue Service wage and income transcript), *appeal docketed*, No. 3-20380 (SEC July 1, 2021).

[22] FINRA Rule 2010.

[23] FINRA Rule 0140(a).

[24] *Dep't of Enforcement v. DiPaola*, No. 2018057274302, 2023 FINRA Discip. LEXIS 4, at *37 n.18 (NAC Mar. 23, 2023) (citing *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *41 n.49 (Sept. 24, 2015)), *appeal docketed*, No. 3-21402 (SEC May 1, 2023).

his customers ("the First Request").[25] FINRA sent the First Request via USPS first-class mail and FedEx to Grande's last known residential address in CRD and provided a due date of November 27, 2023.[26] The First Request was delivered by FedEx to the CRD address on November 15, 2023.[27] On that same day, FINRA staff spoke with Grande by telephone and he acknowledged receipt of the request.[28] During the call, Grande stated that he did not have access to the paperwork related to the customers identified in the staff's First Request and that he could not recall certain information requested.[29] FINRA staff explained that Grande was required to submit a written response to the 8210 request.[30] Grande stated that he needed time to think about how he was going to respond.[31] But Grande did not respond to the First Request and did not request an extension of time to respond.[32]

On November 28, 2023, FINRA staff sent Grande a second written request for information and documents, pursuant to Rule 8210 ("the Second Request"), repeating the request it made on November 13, 2023.[33] FINRA sent the Second Request via USPS first-class mail and FedEx to the CRD address and provided a due date of December 12, 2023.[34] The Second Request was delivered by FedEx to the CRD address on November 30, 2023.[35] Grande failed to respond to the Second Request by December 12, 2023, and did not request an extension of time to respond.[36]

FINRA properly served the First Request and the Second Request pursuant to the service provisions of FINRA Rule 8210(d). Enforcement (1) mailed or otherwise transmitted the requests to Grande's last known residential address as reflected in CRD and (2) lacked actual knowledge that this address was outdated or inaccurate.[37] As a result, I deem Grande to have

[25] Compl. ¶ 13; Sakany Decl. ¶ 9; CX-3.

[26] Compl. ¶ 14; Sakany Decl. ¶¶ 9, 10; CX-3.

[27] Compl. ¶ 15; Sakany Decl. ¶ 10; CX-3, at 6.

[28] Compl. ¶ 16; Sakany Decl. ¶ 11.

[29] Compl. ¶ 16; Sakany Decl. ¶ 11.

[30] Compl. ¶ 16; Sakany Decl. ¶ 11.

[31] Compl. ¶ 16; Sakany Decl. ¶ 11.

[32] Compl. ¶ 17; Sakany Decl. ¶ 11.

[33] Compl. ¶ 18; Sakany Decl. ¶ 12; CX-3.

[34] Compl. ¶ 19; Sakany Decl. ¶¶ 12, 13; CX-3.

[35] Compl. ¶ 20; Sakany Decl. ¶ 13; CX-3, at 14.

[36] Compl. ¶ 22; Sakany Decl. ¶ 17.

[37] Compl. ¶¶ 14, 19; Sakany Decl. ¶ 14.

received constructive notice of the requests.[38] I further find that Grande received actual notice of the First Request because he contacted FINRA after receiving it and spoke to FINRA staff by telephone regarding the request.

By failing to produce the information requested by FINRA staff, Grande violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend that if an individual does not respond in any manner to a request for information made pursuant to Rule 8210, a bar should be standard.[39] In cases where an individual provides a partial but incomplete response, a bar is standard "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."[40] The Principal Considerations in determining sanctions for a partial but incomplete response to a Rule 8210 request are (1) the importance of the information requested that was not provided, as viewed from FINRA's perspective, and whether the information that was provided was relevant and responsive to the request; (2) the number of requests FINRA made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether respondent thoroughly explained valid reasons for the deficiencies in the response.[41]

I find that the limited information Grande provided to FINRA during the November 15, 2023 telephone call relating to the First Request did not constitute a response. The information was not provided in writing, as required by the First Request, and Grande did not address each of the specific items requested.[42] I further find that the information FINRA sought was material to FINRA's investigation and relevant to whether Grande's recommendations to his customers were suitable.[43] Enforcement maintains that Grande's failure to provide the information requested impeded FINRA's investigation.[44]

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[38] *Dep't of Enforcement v. Felix*, No. 2020065128501, 2022 FINRA Discip. LEXIS 13, at*16 (NAC Oct. 13, 2022) ("Because FINRA properly served the FINRA Rule 8210 requests, Felix is deemed to have received them. *See* FINRA Rule 8210(d)."), *aff'd*, Exchange Act Release No. 100662, 2024 SEC LEXIS 1860 (Aug. 6, 2024).

[39] FINRA Sanction Guidelines at 93 (2024), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

[40] *Id.*

[41] *Id.*

[42] Sakany Decl. ¶ 39.

[43] Compl. ¶ 24.

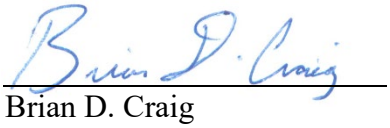
[44] *Id.*

Considering the foregoing, and because I find there are no mitigating factors, the appropriate sanction is a bar in all capacities. In light of the bar, I do not also impose a fine.[45]

IV. Order

Enforcement's Default Motion is **GRANTED**. For violating FINRA Rules 8210 and 2010 by failing to provide information as required by FINRA Rule 8210, Respondent Michael Charles Grande is barred from associating with any FINRA member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.

SO ORDERED.



Brian D. Craig
Hearing Officer

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[45] Guidelines at 9 (Technical Matters) ("Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss."). The record in this case did not demonstrate customer loss.