

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DANIEL PITA
(CRD No. 6759879),

Respondent.

Disciplinary Proceeding
No. 2021071965401

Hearing Officer–RES

DEFAULT DECISION

November 29, 2022

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: Nicole Waksmundzki, Esq., Christina Stanland, Esq., Todd Beaton, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a Complaint on August 18, 2022 against Respondent Daniel Pita, formerly a registered representative of a FINRA member firm. In a single cause of action, the Complaint alleges that Respondent failed to provide information and documents FINRA requested under FINRA Rule 8210.¹ According to the Complaint, Respondent violated FINRA Rules 8210 and 2010.²

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 Nicole Waksmundzki, Esq. (“Waksmundzki Decl.”) and 15 supporting exhibits (CX-1 through CX-15). Respondent did not file an opposition or

¹ Complaint (“Compl.”) ¶ 1.

² Compl. ¶ 1.

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 Daniel Pita registered with FINRA as a General Securities Representative in May 2018 through an association with NYLIFE Securities LLC (“NYLIFE”), a FINRA member firm.³ On December 10, 2021, NYLIFE filed a Uniform Termination Notice for Securities Industry Registration on Respondent’s behalf, disclosing the firm had terminated his association for administrative reasons.⁴ Respondent is not now registered with FINRA or associated with a FINRA member firm.

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 of the effective date of the termination of Respondent’s registration through NYLIFE, and (2) charges him with failing to respond to FINRA Rule 8210 requests in the two-year period after he ceased to be registered or associated with a FINRA member firm.⁵

C. Origin of the Investigation

The investigation originated from a regulatory tip that Respondent had allegedly failed to disclose all his outside business activities (“OBAs”) while employed by NYLIFE.⁶

D. Respondent’s Default

Enforcement served Respondent with the Complaint and the First and Second Notices of Complaint by first-class mail and first-class certified mail, return receipt requested, to Respondent’s last known residential address as reflected in CRD (“CRD Address”), in accordance with FINRA Rule 9134(a)(2) and (b)(1).⁷ Respondent failed to file an Answer, as

³ Compl. ¶ 2.

⁴ Compl. ¶ 2; Waksmundzki Decl. ¶ 5.

⁵ Compl. ¶ 3; Waksmundzki Decl. ¶ 6.

⁶ Waksmundzki Decl. ¶ 4.

⁷ Waksmundzki Decl. ¶¶ 9, 17. The USPS did not provide Enforcement with a certified mail return receipt for the First or Second Notice of Complaint. Decl. ¶¶ 13, 21. The regular first-class mailings that Enforcement sent to Respondent’s CRD Address were not returned. Decl. ¶¶ 14, 22.

required by FINRA Rule 9215, or otherwise respond to the Complaint.⁸ Based on these facts, I find Respondent in default.

FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who fails to file an Answer to the Complaint within the time allowed by FINRA Rule 9215.⁹ Respondent had the opportunity to file an Answer but did not. Respondent was warned of the possible consequences of not answering the Complaint.¹⁰ He failed to heed the warning. I therefore find a default decision warranted.¹¹ Once I find a respondent in default, I am authorized by FINRA Rules 9215(f) and 9269 to treat the allegations of the Complaint as admitted. As described below, I find that Respondent committed the violation charged in the Complaint and bar him from associating in any capacity with any FINRA member firm.

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 five FINRA Rule 8210 requests. FINRA Rule 8210 requires an associated person like Respondent 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.¹²

FINRA's examination authority under FINRA Rule 8210 is unequivocal and unqualified.¹³ FINRA Rule 8210 directs an associated person to cooperate with FINRA information requests.¹⁴ A violation of the Rule occurs when the associated person fails to

⁸ Waksmundzki Decl. ¶¶ 16, 25.

⁹ FINRA Rule 9269(a)(1).

¹⁰ Waksmundzki Decl. ¶ 24.

¹¹ Respondent is notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

¹² FINRA Rule 8210(a)(1) and (c).

¹³ *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).

¹⁴ *Bradley C. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *13 (Jan. 21, 2022).

provide full and prompt cooperation to FINRA in response to a request for information.¹⁵ Because FINRA does not have subpoena power, the Rule provides FINRA the means to obtain information necessary to conduct investigations.¹⁶ A person formerly associated with a FINRA member firm must respond to a FINRA Rule 8210 request issued within two years after the effective date of the termination of his registration with that firm.¹⁷ FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A violation of FINRA Rule 8210 also violates FINRA Rule 2010.¹⁸

2. Facts Showing a Violation

In connection with an investigation, FINRA staff sent a FINRA Rule 8210 request to Respondent on March 7, 2022, directing him to provide information and documents.¹⁹ FINRA requested, for periods roughly corresponding to the years 2019, 2020, and 2021, that Respondent:

- provide a list of all OBAs in which Respondent was involved;
- identify any bank accounts in his name or for his benefit;
- identify any bank accounts for which he had the ability or legal authority to withdraw, transfer, or move funds;
- produce account statements for his bank accounts;
- provide his personal federal tax returns; and
- produce federal tax returns for any OBAs.²⁰

The United States Postal Service (“USPS”) reported that a copy of the FINRA Rule 8210 request was “Delivered to Agent for Final Delivery.”²¹ On the return date of the request, Respondent emailed FINRA stating he had received the request, “[a]ll OBA were disclosure [sic]

¹⁵ *DreamFunded Marketplace, LLC*, 2021 FINRA Discip. LEXIS 24, at *26.

¹⁶ *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).

¹⁷ *Reifler*, 2022 SEC LEXIS 167, at *14.

¹⁸ *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.”); *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).

¹⁹ Compl. ¶ 5.

²⁰ Compl. ¶ 5.

²¹ Compl. ¶ 7.

to NYL as part of my contract,” and “I have no interest to disclosure [sic] financials of any OBA, nor do I intent [sic] to work in the Financial field in the future.”²² Respondent did not provide any information or documents. He did not identify any OBA, nor did he produce any statement from any bank account he owned or controlled, or any applicable tax return.²³

FINRA tried to reach Respondent by telephone at the number listed in his NYLIFE employment records and his CLEAR report.²⁴ FINRA left a voicemail stating that FINRA Rule 8210 obligates him to respond to FINRA’s requests fully, and his email was neither a complete nor sufficient response to the request.²⁵ FINRA sent a follow-up email to the email address Respondent had used days earlier to communicate with FINRA.²⁶ Respondent did not respond to this email or to FINRA’s voicemail.

FINRA sent Respondent four more FINRA Rule 8210 requests (the “second, third, fourth, and fifth requests”) to his CRD Address. The following facts pertain to these requests:

- The second, third, and fourth requests were sent by first-class mail, certified mail, return receipt requested, and email. FINRA sent the fifth request by first-class mail and FedEx.²⁷
- The second request explained Respondent’s email did not constitute a complete response to FINRA’s first request.²⁸
- USPS reported that the second and third requests had been delivered and left with an individual at Respondent’s CRD Address. The FedEx tracking system indicated the fifth request had been delivered.²⁹
- FINRA tried to reach Respondent by telephone, leaving voicemails, and sending Respondent follow-up emails.³⁰
- Respondent failed to respond to the voicemails and follow-up emails.³¹

²² Compl. ¶ 8.

²³ Compl. ¶ 8.

²⁴ Compl. ¶ 9.

²⁵ Compl. ¶ 9.

²⁶ Compl. ¶ 9.

²⁷ Compl. ¶¶ 13, 19, 26, 30.

²⁸ Compl. ¶ 12.

²⁹ Compl. ¶¶ 14, 21, 31.

³⁰ Compl. ¶¶ 16, 23, 33.

³¹ Compl. ¶¶ 17, 24, 34.

- Respondent failed to acknowledge or respond to the FINRA Rule 8210 requests.³²

I find that Respondent failed to respond to five FINRA Rule 8210 requests. His failure to provide information and documents impeded FINRA’s investigation and deprived it of material information as to whether he had engaged in undisclosed OBAs in violation of FINRA Rules.³³ I find that Respondent violated FINRA Rules 8210 and 2010.

III. Sanctions

According to FINRA’s Sanction Guidelines (“Guidelines”), 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.³⁴ 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 \$50,000.³⁵ A bar is standard if the respondent did not respond in any manner.³⁶ The single specific consideration is the importance of the information requested as viewed from FINRA’s perspective.³⁷ 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.³⁸ It is aggravating if a respondent ignores several FINRA Rule 8210 requests over several months.³⁹

Here, the subjects about which Respondent failed to provide information and documents were important as viewed from FINRA’s perspective. Respondent’s non-production prevented FINRA from investigating whether he had engaged in undisclosed OBAs. Only Respondent could provide critical information about these alleged businesses. If he in fact had engaged in undisclosed OBAs, he could be found in violation of FINRA Rules 3270 and 2010. His failure to provide information and documents hampered FINRA’s ability to investigate his alleged

³² Compl. ¶¶ 15, 22, 28, 32.

³³ Compl. ¶ 40.

³⁴ FINRA Sanction Guidelines at 2 (Sept. 2022) (General Principle No. 1), <https://www.finra.org/industry/sanction-guidelines>.

³⁵ Guidelines at 93.

³⁶ Guidelines at 93; *accord Dep’t of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *37 (NAC July 21, 2014), *aff’d*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015).

³⁷ Guidelines at 93.

³⁸ *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *50-52 (Sept. 24, 2015).

³⁹ *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).

misconduct and determine whether he had violated FINRA Rules. There are no mitigating factors.

Considering the relevant facts and the applicable Sanction Guideline, for Respondent's failure to provide information and documents as directed by five FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010, I bar Respondent from associating with any FINRA member firm in any capacity. I do not impose a fine.⁴⁰

IV. Order

Respondent Daniel Pita is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents as directed by five FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010. The bar shall be effective immediately if this Default Decision becomes FINRA's final disciplinary action.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Copies to:

Daniel Pita (via email, first-class mail, and overnight courier)
Nicole Waksmundzki, Esq. (via email)
Christina Stanland, Esq. (via email)
Todd Beaton, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

⁴⁰ Guidelines at 9 ("Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.").