

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FRANK V. SAPARETO
(CRD No. 2274877),

Respondent.

Disciplinary Proceeding
No. 2018060379701

Hearing Officer–MJD

DEFAULT DECISION

August 9, 2021

Respondent is barred from associating with any FINRA member firm in any capacity for providing false or misleading testimony and written information during a FINRA investigation and for engaging in an undisclosed outside business activity.

Appearances

For the Complainant: David F. Newman, Esq., Kevin Hartzell, Esq., and Stuart P. Feldman, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

The Department of Enforcement filed a Complaint against Frank V. Sapareto (“Respondent”) containing three causes of action. Cause one charges Respondent with violating FINRA Rules 3270 and 2010 by engaging in an undisclosed outside business activity involving the production of a movie he was going to market and sell. Causes two and three allege that he provided FINRA investigators with false or misleading written information and false or misleading testimony during an on-the-record interview (“OTR”), in violation of FINRA Rules 8210 and 2010.

Enforcement properly served Respondent with two Notices of Complaint and the Complaint. Respondent did not file an Answer to the Complaint. On June 25, 2021, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Enforcement’s counsel David Newman (“Newman Decl.”) and seven exhibits (CX-1 through CX-7). Respondent did not respond to the Default Motion.

For the reasons set forth below, I find Respondent in default. I grant Enforcement's Default Motion and deem the facts alleged in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

I. Findings of Fact and Conclusions of Law

A. Background

Respondent entered the securities industry in 1992. From February 2017 until October 31, 2018, he was registered with FINRA as an investment company and variable contracts products representative through an association with Advisory Group Equity Services Ltd. ("AGES").¹ On October 31, 2018, AGES filed a Uniform Termination Notice for Securities Industry Registration (Form U5) to terminate Respondent's registration "due to a violation of the Firm's Written Supervisory Procedures and FINRA Rule 3270 Outside Business Activities."² Respondent later registered with two other FINRA member firms, from January 2, 2019 to January 15, 2019, and then from March 4, 2019, until May 5, 2020.³

B. Jurisdiction

Respondent was last registered with FINRA on May 5, 2020.⁴ 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: (i) the Complaint was filed within two years of the effective date of termination of Respondent's registration with his last FINRA member firm, and (ii) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

C. Origin of the Investigation

AGES learned of Respondent's possible participation in an undisclosed outside business activity when Respondent was sued in October 2018 in connection with the activity. AGES then terminated Respondent and filed a Form U5. Respondent's termination by AGES led FINRA to investigate his possible misconduct.⁵ The investigation led to the filing of the Complaint.

D. Respondent Defaulted by Failing to Answer the Complaint

Enforcement served Respondent 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 March 31, 2021, and the Second Notice of Complaint and

¹ Complaint ("Compl.") ¶ 5; Newman Decl. ¶¶ 4, 12-13; CX-1.

² Compl. ¶ 6; Newman Decl. ¶ 4; CX-1.

³ Compl. ¶¶ 7-8; Newman Decl. ¶¶ 14-15; CX-1.

⁴ Compl. ¶ 8; Newman Decl. ¶¶ 15-16; CX-1.

⁵ Compl. ¶¶ 2-3, 20-22.

Complaint on May 4, 2021.⁶ In each case, Enforcement served Respondent by certified mail, return receipt requested, at his last known residential address recorded in FINRA's Central Registration Depository ("CRD").⁷ Respondent thus received valid constructive notice of this proceeding.⁸

Pursuant to FINRA Rule 9215, Respondent was required to file an Answer or otherwise respond to the Complaint by May 21, 2021. Respondent did not respond to the Complaint. I thus find that Respondent defaulted.

On May 26, 2021, I issued an Order instructing Enforcement to file a Default Motion. On June 25, 2021, Enforcement filed its Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,⁹ and deem the allegations in the Complaint admitted.

E. Respondent Engaged in an Undisclosed Outside Business Activity (Cause One)

Cause one alleges that Respondent engaged in an undisclosed outside business activity, in violation of FINRA Rules 3270 and 2010.¹⁰ FINRA Rule 3270 provides that:

[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.¹¹

⁶ Newman Decl. ¶¶ 21, 32; CX-2; CX-5.

⁷ Newman Decl. ¶¶ 19, 21, 32; CX-4; CX-7. Enforcement also emailed the Notice and Second Notice of Complaint to Respondent at an email address he used to communicate with the staff during the investigation. Newman Decl. ¶¶ 23, 35; CX-3, at 1, 18; CX-6, at 1-2. Enforcement is not aware of any other mailing address for Respondent besides the one recorded in CRD. Newman Decl. ¶¶ 20, 33. Additionally, Enforcement is not aware of a business address for Respondent because he is no longer registered with a FINRA member firm. Newman Decl. ¶¶ 22, 34.

⁸ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 & n.21 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

⁹ Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

¹⁰ Conduct that violates other FINRA rules is inconsistent with the high standards of commercial honor and just and equitable principles of trade and therefore also violates Rule 2010. See *Dep't of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *15 n.6 (NAC Oct. 2, 2013), *aff'd in relevant part*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142 (May 27, 2015). And, specifically, a violation of FINRA Rule 3270 also violates FINRA Rule 2010. *Dep't of Enforcement v. Titan Sec.*, No. 2013035345701, 2021 FINRA Discip. LEXIS 5, at *55 (NAC June 2, 2021), *appeal docketed*, No. 3-20387 (SEC June 29, 2021).

¹¹ Prior written notice is important to member firms' discharge of their regulatory obligations under Supplementary Material .01 to FINRA Rule 3270. This provision requires member firms to consider whether a proposed outside

FINRA Rule 3270 “addresses the securities industry’s concern about preventing harm to the investing public or a firm’s entanglement in legal difficulties based on an associated person’s unmonitored outside business activities.”¹² The purpose of FINRA’s outside business activity rule is to provide firms with “prompt notification of all outside business activities of their associated persons so that the member’s objections, if any, to such activities could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law.”¹³ This rule is “prophylactic” and “designed to assure that an employee engages in conduct consistent with his duties to his employer and its clients.”¹⁴ Thus, the Rule “is intentionally broad [and requires] registered persons ‘to report *any* kind of business activity engaged in away from their firms.’”¹⁵ Thus the Rule “extend[s] to all outside business activity,”¹⁶ and is not limited to securities-related business.¹⁷ A showing of intent is not required to establish a violation of the rule.¹⁸

Consistent with the prohibitions contained in FINRA Rule 3270, AGES’s written supervisory procedures cautioned its registered persons not to engage in outside business activities without providing the firm with prior written notice. In 2017, Respondent acknowledged that he had reviewed and understood AGES’s procedure in an annual compliance form. He did not later disclose to AGES that he had initiated an outside business activity.¹⁹

business activity will “interfere with or otherwise compromise the registered person’s responsibilities to the member and/or the member’s customers” or “be viewed by customers or the public as part of the member’s business....”

¹² *Dep’t of Enforcement v. Connors*, No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *32 (NAC Jan. 10, 2017).

¹³ *Dep’t of Enforcement v. Houston*, No. 2006005318801, 2013 FINRA Discip. LEXIS 3, at *32 (NAC Feb. 22, 2013) (quoting NASD Notice to Members 88-86 (Nov. 1998), <http://www.finra.org/rules-guidance/notices/88-86>), *aff’d*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614 (Feb. 20, 2014).

¹⁴ *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *26 (July 1, 2008); *Dep’t of Enforcement v. Giblen*, No. 2011025957702, 2014 FINRA Discip. LEXIS 39, at *26–27 (NAC Dec. 10, 2014) (“When adhered to, [the outside business activity rule] is prophylactic and allows FINRA [member] firms to oversee their employees’ outside business activities, or to prohibit the activities altogether.”).

¹⁵ *Dep’t of Enforcement v. Connors*, No. 2012033362101, 2016 FINRA Discip. LEXIS 1, at *24 (OHO Jan. 15, 2016) (quoting NASD Notice to Members 01-79 (Dec. 2001), <http://www.finra.org/rules-guidance/notices/01-79>) (emphasis in original), *aff’d*, 2017 FINRA Discip. LEXIS 2 (NAC Jan. 10, 2017).

¹⁶ *Dep’t of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *39 (NAC Dec. 29, 2015), *aff’d*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016).

¹⁷ *Dist. Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD LEXIS 123, at *101 (NBCC Oct. 31, 1997).

¹⁸ *Dep’t of Enforcement v. McGuire*, No. 20110273503, 2015 FINRA Discip. LEXIS 53, at *39 (NAC Dec. 17, 2015).

¹⁹ Compl. ¶¶ 17-19. AGES’s written supervisory procedures stated that no registered person “may be an employee, independent contractor, sole proprietor, officer, director or partner of an enterprise/business other than [AGES], or be compensated, or have reasonable expectation of compensation as a result of such activity, unless he or she has provided PRIOR written notice to [AGES]. Registered persons should provide the required notice as far in advance

Respondent began his outside business activities in about April 2018 when he took steps to produce a film in California that he intended to appear in and then market and sell.²⁰ In early 2018, before filming began, Respondent paid, or authorized the payment of, more than \$3,000 in expenses for the movie's production.²¹ At around this time, Respondent recruited JC to direct the planned movie. Respondent sent JC more than a hundred emails from his personal account concerning, for example, finding and paying actors, finding and paying for a location to film the movie, and purchasing filming equipment and advertising.²² Between April and June 2018, Respondent paid over \$1,000 to rent the location and over \$700 to a marketing professional to create a website and for on-line advertising. In June 2018, Respondent also paid over \$1,000 for filming equipment.²³

In June 2018, Respondent formed Standard Video LLC ("Standard Video"), a limited liability company organized in New Hampshire. He had a business formation service company prepare and file a Certificate of Formation for Standard Video with state authorities. The filing identified Respondent as a member of the limited liability company and included his electronic signature.²⁴

In late June 2018, Respondent traveled to California where he and JC filmed the movie, using as a location a cabin he rented for the purpose. The day of filming, he withdrew \$5,100 in cash to pay for production expenses, which included fees to actors.²⁵

I find that Respondent failed to disclose to AGES his involvement in Standard Video and his activities associated with making the film, and, thus, that he engaged in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010.

F. Respondent Violated FINRA Rules 8210 and 2010 by Providing False or Misleading Information and Testimony to FINRA

Causes two and three allege that Respondent violated FINRA Rules 8210 and 2010 by providing false or misleading written statements to FINRA in March 2019 and giving false testimony during an OTR in November 2019 about his activities involving Standard Video and his dealings with JC.

as possible, however, no later than two weeks prior to the planned commencement of the activity.” Compl. ¶17 [emphasis in original].

²⁰ Compl. ¶ 10.

²¹ Compl. ¶ 11.

²² Compl. ¶ 12.

²³ Compl. ¶ 12.

²⁴ Compl. ¶ 13.

²⁵ Compl. ¶¶ 15-16.

FINRA Rule 8210 is among FINRA’s most important tools for investigating potential wrongdoing.²⁶ It requires persons subject to FINRA’s jurisdiction to provide information to FINRA upon request. The Rule “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.”²⁷ Because FINRA lacks subpoena power, it must rely on the Rule to police the activities of associated persons.²⁸ The Rule is unequivocal in requiring an associated person to cooperate.²⁹

An associated person violates the Rule when he fails to provide full and prompt cooperation to FINRA in response to a request for information.³⁰ It is also a violation of FINRA Rule 8210 for an associated person to provide false or misleading information, including false testimony, to FINRA during an investigation.³¹

1. Respondent Made False or Misleading Written Statements to FINRA (Cause Two)

Respondent gave FINRA false written statements or information about his activities concerning Standard Video. On March 6, 2019, FINRA staff requested, pursuant to FINRA Rules 8210, that Respondent state whether he gave notice to, or received approval from, AGES to form Standard Video or to engage in any activities related to Standard Video. The staff also asked Respondent to produce copies of correspondence with JC concerning Standard Video and its activities.³²

On March 11, 2019, Respondent answered the staff in writing, denying that he had formed a company or filed any paperwork to conduct business involving JC or Standard Video.

²⁶ See *Dep’t of Mkt. Regulation v. Sciascia*, No. CMS040069, 2006 NASD Discip. LEXIS 22, at *11 (NAC Aug. 7, 2006) (analyzing NASD Rule 8210, the predecessor to FINRA Rule 8210).

²⁷ *Dep’t of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20 (NAC May 15, 2019). See also *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”).

²⁸ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008), *petition for review denied*, 566 F.3d 1172 (D.C. Cir. 2009). See also *Dep’t of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *14 (NAC May 26, 2021), *appeal docketed*, No. 2-30380 (SEC June 28, 2021) (The rule “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”) (quoting *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)).

²⁹ *Dep’t of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *44 (NAC July 24, 2017), *appeal dismissed*, Exchange Act Release No. 82970, 2018 SEC LEXIS 823 (Mar. 30, 2018).

³⁰ *Dep’t of Enforcement v. Reifler*, No. 2016050924601, 2019 FINRA Discip. LEXIS 44, at *10 (NAC Sept. 30, 2019), *appeal docketed*, No. 3-19589 (SEC Oct. 10, 2019).

³¹ *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008).

³² Compl. ¶¶ 23, 25, 41.

He also denied having any correspondence with JC about Standard Video or its activities (except for communicating with him about where they would meet in Los Angeles).³³

Respondent's written statements to FINRA about Standard Video and his dealings with JC were false or misleading. By providing false or misleading statements and information, Respondent violated FINRA Rules 8210 and 2010.³⁴

2. Respondent Gave False or Misleading Testimony at an OTR (Cause Three)

On October 22, 2019, FINRA staff sent Respondent a request pursuant to FINRA Rule 8210 to provide sworn testimony at an OTR. Respondent appeared and provided testimony under oath on November 22, 2019.³⁵

The Complaint alleges that Respondent made five distinct false or misleading statements to FINRA during the OTR. First, he falsely denied having any involvement in forming Standard Video and stated that he did not file the Certificate of Formation for the company. He also said the filing was done without his knowledge. Second, he falsely and repeatedly denied engaging in any business with JC or through Standard Video involving the making of a film.³⁶

Third, Respondent denied emailing JC about the production of the film and when shown an email he had sent to JC, he falsely denied having sent it. Fourth, he denied traveling to California for the purpose of filming a movie that he intended to market and sell using Standard Video. Instead, Respondent testified that he went there for vacation and that he had loaned his camcorder to JC so that JC could film promotional videos. Finally, the Complaint charges that Respondent falsely testified that the \$5,100 in cash he withdrew was for personal expenses when in fact he used the money to pay expenses for the film.³⁷

By providing false or misleading testimony at an OTR, Respondent violated FINRA Rules 8210 and 2010.

³³ Compl. ¶¶ 24, 26, 42.

³⁴ FINRA Rule 2010 requires a member to "observe high standards of commercial honor and just and equitable principles of trade." It is well established that a violation of Rule 8210 is also a violation of Rule 2010. *See CMG Inst'l Trading, LLC*, 2009 SEC LEXIS 215, at *29-30; *Stephen J. Gluckman*, Exchange Act Release No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

³⁵ Compl. ¶¶ 28, 46.

³⁶ Compl. ¶¶ 29, 47.

³⁷ Compl. ¶¶ 29, 47.

II. Sanctions

A. Respondent is Barred for Providing False and Misleading Written Statements and for Giving False and Misleading Testimony to FINRA

I address first sanctions for Respondent's violations of FINRA Rules 8210 and 2010 because these violations are more serious. "The failure to respond truthfully to a FINRA Rule 8210 request is as serious and harmful as a complete failure to respond, and comparable sanctions are appropriate."³⁸ The SEC has stated that "the failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry."³⁹

FINRA's Sanction Guidelines ("Guidelines") provide that for failing to respond truthfully to requests for information made pursuant to FINRA Rule 8210, adjudicators should consider a fine of \$25,000 to \$77,000. Failing to provide truthful responses to requests for information is akin to failing to respond in any manner to a FINRA request for information, for which a bar is the standard sanctions for an individual respondent and where there are no mitigating factors.⁴⁰ When mitigation exists, the Guidelines recommend suspending an individual in any or all capacities for up to two years.⁴¹ The only principal consideration for a failure to respond truthfully is the importance of the requested information to FINRA.⁴²

Applying the principal consideration here shows that bars are appropriate for Respondent's misconduct alleged in causes two and three. FINRA was investigating potentially serious misconduct by Respondent: engaging in undisclosed outside business activities.⁴³ FINRA needed truthful and accurate information and testimony from Respondent to perform its regulatory function. Respondent's false and misleading statements prevented FINRA from fulfilling its regulatory responsibilities. Associated persons who violate Rule 8210 "present too great a risk to the markets and investors to be permitted to remain in the securities industry."⁴⁴

³⁸ *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *31 (NAC Mar. 9, 2015).

³⁹ *Ortiz*, 2008 SEC LEXIS 2401, at *32 (holding that supplying false information to FINRA is similar to "refusing to respond at all to requests for information" and "can conceal wrongdoing and thereby 'subverts [FINRA's] ability to perform its regulatory function and protect the public interest'").

⁴⁰ Guidelines at 33 (2020), <http://www.finra.org/sanctionguidelines>.

⁴¹ Guidelines at 33.

⁴² Guidelines at 33.

⁴³ *See Connors*, 2017 FINRA Discip. LEXIS 2, at *32 ("Failing to disclose outside business activities deprives customers of the oversight and supervision provided by an employer member firm.").

⁴⁴ *Dep't of Enforcement v. Laverty*, No. 2016050205901, 2020 FINRA Discip. LEXIS 47, at *36 (NAC Dec. 22, 2020) (affirming a bar where respondent provided false and misleading information during an OTR) (quoting *Paz Sec., Inc.*, 2008 SEC LEXIS 820, at *13).

The available evidence reveals no justification or excuse for Respondent's false or misleading statements and testimony. I find no mitigating factors. Respondent repeatedly lied to mislead FINRA staff and to conceal his activities. Respondent's deceptive behavior demonstrates that he is incapable of complying with FINRA Rules and securities laws and regulations. Thus, the appropriate sanctions are bars in all capacities for the violations of FINRA Rules 8210 and 2010, as alleged in causes two and three.

B. Respondent's Outside Business Activity

For engaging in an outside business activity in violation of FINRA Rule 3270, the Guidelines suggest a fine of \$2,500 to \$77,000 and a suspension in any or all capacities ranging from ten business days to three months in the absence of aggravating conduct.⁴⁵ When the outside business activity involves aggravating factors, the Guidelines suggest a longer suspension of up to one year. Where aggravating factors predominate, the Guidelines recommend a suspension of up to two years or a bar.⁴⁶

To determine an appropriate sanction for violations of FINRA Rule 3270, the Guidelines direct adjudicators to several principal considerations: (1) whether the activity involved firm customers; (2) whether the activity resulted directly or indirectly in injury to other parties, including the investing public, and the nature and extent of the injury; (3) the duration of the outside activity, the number of customers, and the dollar volume of sales; (4) whether the respondent marketed and sold the product or service in a way that might have created the impression that his member firm had approved the product or service; (5) whether the respondent misled his member firm about the existence of the outside activity or concealed the activity from the firm; and (6) the importance of the respondent's role in the outside business activity.⁴⁷

I find that there are no aggravating factors warranting elevated sanctions. Respondent's activities involved no firm customers, caused no injury to other parties, and did not create the impression that AGES was involved in the endeavor. Respondent's misconduct therefore calls for sanctions at the low end of the ranges the Guidelines suggest. Given these circumstances, I find that an appropriate sanction for Respondent's violations of FINRA Rules 3270 and 2010 is a 15-business-day suspension in all capacities and a \$5,000 fine. Considering the bars imposed for violations of FINRA Rule 8210 and 2010 alleged in causes two and three, I do not impose these sanctions.

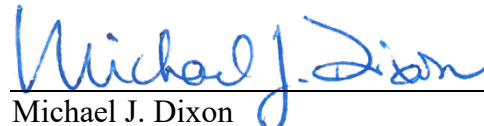
⁴⁵ Guidelines at 13.

⁴⁶ Guidelines at 13.

⁴⁷ Guidelines at 13.

III. Order

Respondent Frank V. Sapareto is barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010, as alleged in causes two and three. In light of the bars, I impose no sanction for his failure to disclose the outside business activity, as alleged in cause one. The two bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Michael J. Dixon
Hearing Officer

Copies to:

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