

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FRANCIS JOSEPH VELTEN
(CRD No. 2291911),

Respondent.

Disciplinary Proceeding
No. 2020066032801

Hearing Officer–DDM

DEFAULT DECISION

July 19, 2022

Respondent is barred from associating with any FINRA member firm in any capacity for failing to comply with requests for information and documents during a FINRA investigation, in violation of FINRA Rules 8210 and 2010.

Appearances

For the Complainant: Yael Epstein, Esq., Loyd Gattis Esq., and Jennifer Crawford, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

FINRA investigated an allegation that Respondent Francis J. Velten improperly traded for his elderly customers away from his firm. In its investigation, FINRA staff sent Respondent four requests for information and documents pursuant to FINRA Rule 8210. Respondent never responded to any of the four investigative requests.

The Department of Enforcement properly served Velten twice with the Notice of Complaint and Complaint. Velten did not answer or respond to the Complaint. Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Enforcement counsel Yael Epstein (“Epstein Decl.”) and 14 exhibits. Velten did not respond to the Default Motion.

For the reasons below, I find Velten in default. I grant Enforcement’s Default Motion and consider the facts alleged in the Complaint admitted under FINRA Rules 9215(f) and 9269(a).

For violating FINRA Rules 8210 and 2010, I bar Velten from associating with any FINRA member firm in any capacity.

II. Findings of Fact and Conclusions of Law

A. Velten's Background

Velten entered the securities industry in 2006. He was registered with Ameriprise Financial Services, LLC ("Ameriprise") from January 27, 2020, to April 28, 2020. Velten resigned from Ameriprise after the firm asked him about his trading for elderly customers while he was associated with Summit Brokerage Inc. ("Summit").¹

B. FINRA's Jurisdiction

Velten was last registered with FINRA on April 28, 2020. Although he is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding under Article V, Section 4(a) of FINRA's By-Laws because (i) the Complaint was filed within two years of the effective date of the Form U5 that terminated Velten's association with a member firm, and (ii) the Complaint charges him with ignoring requests for information from FINRA staff within two years of the termination of his registration.²

C. Origin of the Investigation

FINRA began investigating an allegation that Velten had "churned" and "flipped" customer accounts while he was at Summit by encouraging his elderly customers to surrender their annuities, sell their mutual funds, and invest the proceeds into bonus annuities.³ According to the allegation, Velten's trading, which occurred away from Summit, caused his customers to incur significant surrender charges, while Velten benefited from the commissions.⁴ As part of its investigation, FINRA sought information and documents from Velten about the allegation and his handling of specific customer accounts.⁵

D. Velten's Default

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, 2022, and the Second Notice of Complaint and Complaint on May 2, 2022. In each case, Enforcement served Velten by first-class certified mail, return receipt requested, and via Federal Express, at his last known residential address recorded

¹ Complaint ("Compl.") ¶¶ 2-3; Epstein Decl. ¶¶ 4, 5, 6, 7; Complainant's Exhibit ("CX") -7.

² Compl. ¶ 4; Epstein Decl. ¶ 9.

³ Compl. ¶ 5; Epstein Decl. ¶ 4; CX-5, at 1.

⁴ Compl. ¶ 5; CX-5.

⁵ Compl. ¶ 6; Epstein Decl. ¶¶ 26-27; CX-1; CX-2; CX-3; CX-4.

in the Central Registration Depository (“CRD Address”).⁶ According to Federal Express tracking information, an “F. ELTEN” signed for the First Notice of Complaint and Complaint,⁷ and an “F. Velten” signed for the Second Notice of Complaint and Complaint.⁸ Velten thus received valid notice of this proceeding.⁹

Under FINRA Rule 9215, Velten was required to file an Answer or respond to the Complaint by May 19, 2022. Velten did not respond to the Complaint. I find that Velten defaulted.

On May 24, 2022, I issued an Order instructing Enforcement to file a Default Motion. On June 23, 2022, Enforcement filed its Default Motion. Velten did not respond to the Default Motion. Under FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,¹⁰ and consider the allegations in the Complaint admitted.

E. Velten Violated FINRA Rules 8210 and 2010 by Failing to Produce Information and Documents

The Complaint contains one cause of action. It alleges that Velten violated FINRA Rules 8210 and 2010 by ignoring FINRA staff’s requests to produce information and documents. The staff sent Velten four requests for information under Rule 8210. The Complaint charges him with failing to respond to the four requests.¹¹

Rule 8210 requires persons subject to FINRA’s jurisdiction to provide information to FINRA upon request. 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.”

Rule 8210 “is at the heart of the self-regulatory system for the securities industry” and “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”¹² “FINRA Rule 8210 is unequivocal and

⁶ Epstein Decl. ¶¶ 11, 17, 18. Enforcement also sent the First and Second Notices of Complaint and Complaint by first-class mail to Velten’s CRD Address. Epstein Decl. ¶¶ 12, 18; CX-9; CX-12.

⁷ Epstein Decl. ¶11; CX-11.

⁸ Epstein Decl. ¶ 20; CX-14.

⁹ 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).

¹⁰ Velten may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

¹¹ Compl. ¶¶ 29-30.

¹² *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).

grants FINRA broad authority to obtain information concerning an associated person's securities-related business ventures."¹³ Associated persons must cooperate fully in providing FINRA with information.¹⁴ It is therefore a violation of Rule 8210 for a person to fail to provide information sought by FINRA.¹⁵

FINRA sent its first Rule 8210 request to Velten on October 25, 2021, and asked for a response by November 8, 2021.¹⁶ In the request, FINRA asked that Velten provide a written statement about whether he had improperly traded for elderly customers away from his firm.¹⁷ The request also asked for detailed information about Velten's handling of customer accounts.¹⁸ FINRA sent its Rule 8210 request to Velten at his CRD Address by certified mail and first-class mail.¹⁹ FINRA staff also obtained a LEXIS report, which listed Velten's CRD Address as his current address.²⁰

When Velten failed to respond, FINRA sent its Rule 8210 request a second time on November 12, 2021.²¹ FINRA asked that Velten provide responsive information by November 29, 2021.²² Again, FINRA sent its request to Velten at his CRD Address by certified mail and first-class mail, which FINRA staff re-confirmed with another LEXIS report.²³ On the same day it sent the Rule 8210 request, FINRA called Velten at a telephone number listed by a LEXIS

¹³ *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

¹⁴ 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.").

¹⁵ 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 June 28, 2021).

¹⁶ Compl. ¶ 6; CX-1.

¹⁷ Compl. ¶ 6; CX-1, at 2.

¹⁸ Compl. ¶ 6; CX-1, at 1-2.

¹⁹ Compl. ¶ 7; CX-1, at 1.

²⁰ Compl. ¶ 8. FINRA Rule 8210(d) provides that a notice issued under Rule 8210 is considered received so long as it is sent to the person's last known address as reflected in CRD and the staff does not have actual knowledge that the address is out of date or inaccurate. Enforcement lacks actual knowledge that Velten's CRD Address is or was outdated. Epstein Decl. ¶ 10.

²¹ Compl. ¶ 11; CX-2.

²² Compl. ¶ 11; CX-2.

²³ Compl. ¶ 12; CX-2.

report as possibly belonging to Velten.²⁴ After the voice mail prompt identified the number as Velten's, FINRA left a voice mail.²⁵

Velten did not respond to the voice mail, and again did not respond to the Rule 8210 request.²⁶ So FINRA sent its request a third time, on January 26, 2022, and asked for a response by February 9, 2022.²⁷ This time, FINRA sent its request to Velten at his CRD Address by FedEx, with a signature required, together with first-class mail.²⁸ The FedEx mailing was delivered on January 28, 2022, and a "G. Velten" signed for it.²⁹ Again, Velten did not respond.³⁰

FINRA sent its request to Velten a fourth time on February 10, 2022, with a response due by March 3, 2022.³¹ FINRA again sent its request to Velten by FedEx, with signature required, and first-class mail.³² The FedEx mailing was delivered on February 15, 2022, and signed for by "F. Velten."³³ Again, Velten did not respond.³⁴

Because Velten never responded to FINRA's Rule 8210 requests, he violated FINRA Rules 8210 and 2010.³⁵

III. Sanctions

According to FINRA's Sanction Guidelines ("Guidelines"), if an individual never responds to a request for information made under Rule 8210, the standard sanction should be a bar.³⁶ The Guidelines also provide that, when an individual fails to respond, the principal consideration for sanctions is how important the requested information is to FINRA.³⁷

²⁴ Compl. ¶ 14.

²⁵ Compl. ¶ 14.

²⁶ Compl. ¶ 15.

²⁷ Compl. ¶ 16; CX-3.

²⁸ Compl. ¶ 17; CX-3.

²⁹ Compl. ¶ 18.

³⁰ Compl. ¶ 19.

³¹ Compl. ¶ 20; CX-4.

³² Compl. ¶ 21; CX-4.

³³ Compl. ¶ 22.

³⁴ Compl. ¶ 23.

³⁵ A violation of Rule 8210 is also a violation of Rule 2010. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001) (addressing predecessor of Rule 2010).

³⁶ FINRA Sanction Guidelines at 33 (2021), <http://www.finra.org/industry/sanction-guidelines>.

³⁷ *Id.*

FINRA needed the information it requested from Velten to perform its regulatory function and fully investigate potential misconduct.³⁸ Enforcement investigated allegations that Velten had improperly traded for elderly customers away from his firm, causing his customers to incur significant, unnecessary surrender charges so that he could generate sales commissions.³⁹ Velten's failure to respond to regulatory requests deprived FINRA of his information and documents and frustrated FINRA's ability to fulfill its regulatory responsibilities.⁴⁰ There is no evident excuse or justification for Velten's repeated failure to respond to FINRA's requests.

Under these circumstances, there are no mitigating factors. The appropriate sanction is a bar in all capacities. The bar is remedial because it will protect the investing public by encouraging the cooperation essential to the investigation and remediation of industry misconduct. The bar also will deter others from ignoring FINRA's information requests.

IV. Order

By failing to comply with requests for information and documents during a FINRA investigation, Respondent Francis J. Velten violated FINRA Rules 8210 and 2010. For this misconduct, Velten is barred from associating with any FINRA member firm in any capacity. The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Daniel D. McClain
Hearing Officer

Copies to:

Francis Joseph Velten (via overnight courier and first-class mail)
Yael Epstein, Esq. (via email)
Loyd Gattis, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

³⁸ Epstein Decl. ¶ 27.

³⁹ Epstein Decl. ¶ 27; CX-5.

⁴⁰ *Rooney A. Sahai*, Exchange Act Release No. 55046, 2007 SEC LEXIS 13, at *10 (Jan. 5, 2007) (finding that a member's failure to provide information to FINRA undermines its ability to carry out its regulatory mandate).