

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Wilfredo Felix, Jr.
North Amityville, NY,

Respondent.

DECISION

Complaint No. 2020065128501

Dated: October 13, 2022

Respondent failed to respond to multiple FINRA Rule 8210 requests. Held, findings and sanction affirmed.

Appearances

For the Complainant: Megan P. Davis, Esq., Karen C. Daly, Esq., and Kevin Hartzell, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Wilfredo Felix, Jr. appeals an April 27, 2021 default decision in which a Hearing Officer found that he failed to provide information and documents sought by FINRA on three occasions, in violation of FINRA Rules 8210 and 2010. For his failure to provide the requested information and documents, the Hearing Officer barred Felix.

We affirm the Hearing Officer's decision to enter a default and conclude that Felix has not shown good cause for his failure to participate in the proceeding below. After an independent review of the record, we affirm the Hearing Officer's findings and bar Felix from associating with any FINRA member in any capacity.

I. Felix's Background in the Securities Industry

Felix entered the securities industry in 1995. In 2001 he purchased Primex Prime Electronic Execution, Inc. ("Primex"), a FINRA member. Felix associated with Primex as a general securities principal and corporate securities representative, and he also served as the firm's Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), and Financial and

Operations Principal (“FINOP”). Felix’s association with Primex continued until the firm’s FINRA membership terminated in May 2020. He is not currently registered with a FINRA member.

II. The NAC’s Decision on Appeal in Felix’s Prior Disciplinary Proceeding

A year after Felix’s association with Primex terminated, the National Adjudicatory Council (“NAC”) barred him from associating with any member firm in any capacity in a separate disciplinary proceeding involving his failure to respond to FINRA Rule 8210 requests for a personal tax document. *Dep’t of Enf’t v. Felix*, Complaint No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *42 (FINRA NAC May 26, 2021), *appeal docketed*, SEC Proceeding No. 3-20380 (June 28, 2021). The NAC also assessed, but did not impose, a fine and suspension of Felix in his capacity as a FINOP for books and records violations involving the classification of his personal expenses as business expenses of Primex. *Felix*, 2021 FINRA Discip. 7, at *23-24, 42. Felix has appealed that NAC decision to the Securities and Exchange Commission.

III. Factual Background for the Present Appeal

The present disciplinary proceeding stems from Felix’s complete failure to respond to multiple FINRA Rule 8210 requests for Primex’s financial documents. FINRA’s Department of Member Supervision (“Member Supervision”) conducted an examination of Primex in or around January 2020. As part of its examination, Member Supervision requested Primex’s 2019 annual audited report and its general ledger from March 1, 2019, forward. Primex did not produce any of the requested documents. On May 27, 2020, the firm’s membership with FINRA terminated.¹

After Primex’s FINRA membership terminated, Member Supervision directed its requests for the firm’s annual audited report and general ledger to Felix in his personal capacity. On July 8, 2020, Member Supervision sent a FINRA Rule 8210 request for Primex’s general

¹ On May 27, 2020, FINRA cancelled Primex’s membership due to the firm’s nonpayment of fees. On appeal, Felix states that Primex sought to withdraw its membership on April 13, 2020—approximately six weeks before FINRA cancelled the firm’s membership. Whether Primex’s FINRA membership should have ended due to withdrawal or cancellation is not relevant to the outcome of this appeal. It is undisputed that FINRA continued to have jurisdiction to request from Felix Primex’s general ledger and annual audited report. *See* FINRA By-Laws Art. IV, Sec. 6 and Art. V, Sec. 4(a) (FINRA maintains jurisdiction over member firms and associated persons for two years after the firm’s membership or the person’s association terminates); *see also Joseph Patrick Hannan*, 53 S.E.C. 854, 860 (1998) (“Hannan, as a former associated person, had an obligation to make himself available and to provide whatever information he possessed to the NASD.”). FINRA issued the relevant FINRA Rule 8210 requests in July and August of 2020. Therefore, even if Primex’s FINRA membership (and Felix’s association with the firm) had terminated in April 2020, the requests still were issued within FINRA’s two-year continuing jurisdiction over both Felix and Primex. *See* FINRA By-Laws Art. IV, Sec. 6 and Art. V, Sec. 4(a); *Hannan*, 53 S.E.C. at 860.

ledger (from March 1, 2019 through May 27, 2020) and 2019 annual audited report by email and by first-class certified mail to Felix's residential address in North Amityville, New York, as listed in FINRA's Central Registration Depository ("CRD"[®]) ("CRD address"). The request advised Felix that a response was due by July 22, 2020.

Felix did not respond to the July 8, 2020 FINRA Rule 8210 request. Accordingly, on July 27, 2020, Member Supervision sent a second FINRA Rule 8210 request for the same documents by email and by first-class certified mail to Felix's CRD address. The request advised Felix that a response was due by August 10, 2020, and warned that his failure to comply could result in a disciplinary proceeding and sanctions, including a bar from the securities industry.

Felix did not respond to the July 27, 2020 FINRA Rule 8210 request. Accordingly, on August 28, 2020, Member Supervision sent Felix a third and final FINRA Rule 8210 request for Primex's general ledger and annual audited report. Member Supervision sent the request by first-class mail and first-class certified mail to Felix's CRD address, as well as by email. The request advised Felix that he personally had violated FINRA Rule 8210 by failing to respond to the prior requests and warned that his failure to comply by September 11, 2020, could result in a disciplinary proceeding and sanctions, including a bar from the industry. Felix did not respond to Member Supervision's third FINRA Rule 8210 request.

The certified mailings for the July 8 and July 27, 2020 FINRA Rule 8210 requests were returned to Member Supervision as "unclaimed." The certified mailing for the August 28, 2020 FINRA Rule 8210 request was delivered and signed for by "Mr. Wilfredo," and the first-class mailing for that request was not returned.² Member Supervision's emails attaching the FINRA Rule 8210 requests were neither answered nor rejected as undeliverable.

IV. Procedural History

A. Enforcement Files a Complaint and Felix Fails to Answer or Otherwise Respond

FINRA's Department of Enforcement ("Enforcement") commenced a disciplinary proceeding against Felix on December 3, 2020, when it filed a single-cause complaint alleging that he failed to provide information and documents requested by FINRA on three occasions, in violation of FINRA Rules 8210 and 2010. Enforcement sent a notice of complaint and the complaint by first-class certified mail to Felix's CRD address, as well as by email.³ The notice

² The record does not reflect whether the July 8 and July 27, 2020 FINRA Rule 8210 requests also were served by first-class mail.

³ FINRA's rules require Enforcement to serve a complaint on a natural person by mailing it to the person's residential address listed in CRD by first-class certified mail or Express Mail. See FINRA Rules 9131(b), 9134(a)(2) & (b)(1). Service is complete upon mailing. FINRA Rule 9134(b)(3).

specified a December 31, 2020 deadline for Felix's answer. *See* FINRA Rules 9138(c), 9215(a) (requiring a respondent to answer a complaint within 28 days when service is made by mail).⁴

Felix did not answer or otherwise respond to the complaint. Consequently, on January 4, 2021, Enforcement sent a second notice of complaint and a copy of the complaint by first-class certified mail to Felix's CRD address. Enforcement also sent these documents to Felix by email. As required by FINRA Rule 9215(f), the second notice warned Felix that his failure to answer the complaint by January 21, 2021, would allow the Hearing Officer to treat as admitted the complaint's allegations and to issue a default decision against him.⁵

Felix did not answer or otherwise respond by the deadline set in Enforcement's second notice of complaint. After the deadline passed, Enforcement learned that the second notice of complaint had been lost in the mail.⁶ Accordingly, on February 23, 2021, Enforcement served Felix with a third notice of complaint and a copy of the complaint by Express Mail at his CRD address. Enforcement also sent these documents to Felix by email. The third notice warned Felix that his failure to answer the complaint by March 12, 2021, would allow the Hearing Officer to treat as admitted the complaint's allegations and to issue a default decision against him.⁷

After mailing the third notice of complaint and complaint, Enforcement commenced a fourth and final effort to serve Felix by conducting a public records search. Upon confirming that the resulting report did not list a new residential address for Felix, Enforcement sent a February 24, 2021 notice of complaint and a copy of the complaint by Express Mail to Primex's business address, as well as by first-class mail to Felix's CRD address. Enforcement also sent these documents to Felix by email. The fourth notice warned Felix that his failure to answer the complaint by March 15, 2021, would allow the Hearing Officer to treat as admitted the complaint's allegations and to issue a default decision against him.⁸

⁴ The USPS tracking history for the certified mailing reflects that notice of the mailing was left at Felix's address, but the item was unclaimed. The email attaching the notice of complaint and complaint was neither answered nor rejected as undeliverable.

⁵ If a respondent does not file an answer to the complaint within the time required under FINRA Rule 9215(a), Enforcement is required to send a second notice of the complaint that requires an answer within 14 days after service. FINRA Rule 9215(f). The second notice must notify the respondent of the Hearing Officer's authority under FINRA Rule 9269 to enter a default decision in the event of the respondent's failure to file an answer. *Id.*

⁶ The email attaching the second notice of complaint and complaint was neither answered nor rejected as undeliverable.

⁷ The USPS tracking history for the third notice of complaint and complaint reflects that the items were returned to FINRA because "the addressee was not known at the delivery address." The record does not include information concerning delivery of the email.

⁸ The USPS tracking history for the documents sent by Express Mail to Primex's business address reflects that the items were returned because "the address was vacant or the business was no longer operating at the location." The first-class mailing to Felix's residential address in CRD

Felix did not answer or otherwise respond to the complaint by the deadlines set in the third and fourth notices. Accordingly, on March 29, 2021, Enforcement filed a motion requesting that the Hearing Officer issue a default decision, enter findings of liability consistent with the complaint's claims, and impose sanctions for Felix's alleged misconduct. *See* FINRA Rule 9269(a). Enforcement supported its motion with a declaration by counsel that summarized the evidentiary support for the allegations and cause in the complaint and detailed Enforcement's efforts to obtain from Felix an answer to its disciplinary charges. Enforcement also supported its motion with exhibits, including the three FINRA Rule 8210 requests, the USPS tracking information for the notices of complaint, copies of the emails attaching the notices of complaint and complaint, and the public records report. Enforcement sent copies of its motion to Felix by email and by first-class mail to Felix's CRD address. *See* FINRA Rules 9133(b), 9146(l) (requiring service of motions by email, unless the parties agree to an alternative method of service). Felix did not respond to the motion.

B. The Hearing Officer Enters a Default Decision

After Felix failed to respond to Enforcement's motion, the Hearing Officer issued the default decision that is the subject of this appeal. The Hearing Officer found that Enforcement properly served Felix with the complaint on multiple occasions, and that Felix failed to answer or otherwise respond. Accordingly, the Hearing Officer deemed the complaint's allegations admitted under FINRA Rule 9269(a)(2).

Although the Hearing Officer deemed the complaint's allegations admitted, he also evaluated Enforcement's evidence of the FINRA Rule 8210 violation. The Hearing Officer determined that Member Supervision properly served Felix with three FINRA Rule 8210 requests, and that the information and documents sought by the requests lay within Felix's possession, custody, or control. Accordingly, the Hearing Officer concluded that Felix violated FINRA Rules 8210 and 2010 by failing to respond to the requests. The Hearing Officer imposed a bar for this violation, observing that the requested documents—Primex's general ledger and annual audited report—were "highly relevant and necessary to basic member firm oversight."

Felix timely appealed. *See* FINRA Rule 9311(a). On June 24, 2021, the subcommittee of the NAC empaneled to consider Felix's appeal ("Subcommittee") ordered Enforcement to supplement the record with evidence supporting the allegations and contentions detailed in the complaint.⁹ *See* FINRA Rule 9346(f). Enforcement filed the requested supplementary evidence

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was not returned. The email attaching these documents was neither answered nor rejected as undeliverable.

⁹ Although FINRA Rule 9269(a)(2) permits a Hearing Officer to deem the allegations against a defaulting respondent admitted, the Commission nevertheless requires that the record contain sufficient independent evidence to support FINRA's findings and enable the Commission to discharge its statutory review functions under Section 19 of the Securities Exchange Act of 1934. *See, e.g., James M. Russen, Jr.*, 51 S.E.C. 675, 678 n.12 (1993) (noting approvingly in its review of an appeal stemming from a default decision that FINRA, rather than

on July 1, 2021. We have considered this matter based on the written record, including the supplemental record evidence submitted by Enforcement, and briefs filed by the parties.

V. Discussion

We conclude that the Hearing Officer properly entered a default decision and that Felix has not shown good cause for his failure to participate in the proceeding below. Having considered this matter based on the record, we affirm the Hearing Officer's determination that Felix violated FINRA Rules 8210 and 2010 when he failed to respond to multiple requests for information and documents. While Felix attacks the Hearing Officer's decision on several grounds, his arguments are without merit.

A. Felix Defaulted and Has Failed to Show Good Cause for His Failure to Participate in the Proceeding Below

1. The Hearing Officer Properly Exercised His Authority to Enter a Default Decision

FINRA Rule 9269 authorizes a Hearing Officer to issue a default decision against a respondent who fails to answer a complaint within the time afforded under FINRA's rules. FINRA Rule 9269(a)(1); FINRA Rules 9215(a) & (f) (providing respondents with a certain period to respond to a complaint and, when applicable, a second notice of complaint). We conclude that the Hearing Officer properly exercised his authority to enter the default decision in this case because Felix failed to respond to the complaint after proper service.

Enforcement properly served Felix with multiple notices of the complaint. Consistent with FINRA's rules, Enforcement served two notices of complaint and the complaint by first-class certified mail at the residential address Felix provided in CRD. *See* FINRA Rules 9134(a)(2) & (b)(1), 9215(f).¹⁰ After learning that the second notice and the attached complaint were lost in the mail, Enforcement properly served a third notice of complaint and the complaint at Felix's CRD address by Express Mail.¹¹ *See* FINRA Rules 9134(a)(2) & (b)(1), 9215(f).

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simply basing its conclusion on the allegations in the complaint, reviewed the record evidence and determined that it supported a finding of violation). Accordingly, and consistent with our past practice in cases involving defaults, the Subcommittee ordered that Enforcement supplement the record with independent evidence of the violations alleged in the complaint. *See, e.g., Dep't of Enf't v. Verdiner*, Complaint No. CAF020004, 2003 NASD Discip. LEXIS 42, at *4 (NASD NAC Dec. 9, 2003) (“[T]he NAC Subcommittee ordered Enforcement to produce supplemental evidence in support of the allegations in the complaint.”).

¹⁰ *See also NASD Notice to Members 00-56*, at 376 (Aug. 2000), available at: <https://www.finra.org/sites/default/files/NoticeDocument/p003992.pdf> (explaining that a complaint must be served at an individual's residential address listed in CRD).

¹¹ The body of the third notice of complaint erroneously stated that it was a second notice. We find this error immaterial, as the title of the document correctly stated that it was a third

Upon receiving a notification that the third notice and the attached complaint were not delivered because “the addressee was not known at the delivery address,” Enforcement conducted a public records search to verify Felix’s address. After confirming that the resulting report did not list a new residential address for Felix, Enforcement appropriately served a fourth notice and the complaint by Express Mail at his last-known business address, with a duplicate sent by first-class mail to his CRD address. *See* FINRA Rule 9134(b)(1) (providing that papers may be served at a person’s business address).

Because Enforcement properly served Felix, he received at least constructive notice of the complaint and the accompanying warnings that his failure to respond could result in a default. *See* FINRA Rule 9134(b)(3) (service by mail is complete upon mailing); *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285, at *28 n.32 (Apr. 1, 2016) (“FINRA’s service of process on a CRD address generally provides constructive notice to associated persons . . .”). It is undisputed that Felix did not answer or otherwise respond to the complaint. Accordingly, the Hearing Officer’s determination to enter a default was authorized under FINRA’s rules. *Dep’t of Enf’t v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *20-22 (FINRA NAC July 26, 2012) (affirming the entry of a default decision when the respondent did not answer the complaint after proper service, despite the respondent’s assertion that he did not actually receive the complaint).¹²

We also observe that Enforcement made additional efforts to provide Felix with actual notice of the complaint by sending it to the same email address he used to communicate with FINRA in his prior disciplinary appeal.¹³ *Cf. Stephen Robert Williams*, Exchange Act Release No. 89238, 2020 SEC LEXIS 2828, at *9-10 (July 7, 2020) (concluding that the applicant received actual notice of the expedited proceeding against him when, among other things, FINRA sent notices of the proceeding to an email address he previously used to communicate with FINRA). Considering that Felix failed to respond to the complaint after repeated service at his CRD address and email address, as well as service at his last-known business address, the record provides ample support for the Hearing Officer’s determination to enter a default. *See* FINRA Rule 9269(a)(1); *Moore*, 2012 FINRA Discip. LEXIS 45, at *21-22.

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notice and it specified the appropriate deadline for a response. *See* FINRA Rules 9138(c), 9215(f). The document provided sufficient notice to Felix of the risk of a default decision and the action required to avoid a default. *See* FINRA Rule 9215(f).

¹² *Cf. Lance E. Van Alstyne*, 53 S.E.C. 1093, 1099 (1998) (declining to authorize a late appeal from a default decision and concluding that the respondent had sufficient notice of the action despite his claims of never actually receiving complaint).

¹³ Felix used this email address in September 2020 and December 2020 to communicate with the NAC and Enforcement about his previous appeal. Enforcement sent all four notices of complaint to this email address between December 2020 and February 2021.

2. Felix Has Not Shown Good Cause for His Failure to Participate in the Proceeding Below

When we review a default decision, FINRA Rule 9344 requires us to consider whether a respondent has shown good cause for his failure to participate in the proceeding below. If the respondent establishes good cause for his default, FINRA Rule 9344(a) directs us to remand the matter for further proceedings. If the respondent has not established good cause, we consider the appeal based on the record and other documents permitted under FINRA Rules 9346 and 9347. In evaluating whether a respondent has established good cause, we consider such factors as “whether the respondent notified the [CRD] of any change of address; the length of time that has passed between the issuance of the default decision and the respondent’s appeal []; and the reasons for the respondent’s failure to participate in the proceeding before the Hearing Officers.” *NASD Notice to Members 99-77*, 1999 NASD LEXIS 49, at *4 (Sept. 1999).

Felix has not shown good cause for his failure to participate in the disciplinary proceeding. He argues that the default decision should be set aside because he moved from the residential address listed in CRD and therefore did not receive actual notice of the complaint. We reject this argument because Felix remained subject to FINRA’s jurisdiction during the relevant period and was responsible for updating his address in CRD. *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *16 & n.36 (July 27, 2015).¹⁴ Felix provides no reason for his failure to update his address in CRD, and his disregard for this obligation cannot provide good cause for his failure to participate in the proceeding below.¹⁵ *See Warren B. Minton, Jr.*, 55 S.E.C. 1170, 1176-78 (2002) (declining to authorize a late appeal from a default decision when the respondent’s failure to receive the complaint and investigative requests was due to his failure to update his address in CRD); *cf. Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *23-24 (Dec. 11, 2006) (explaining that a respondent “cannot shift the burden of keeping address information current to [FINRA]” and that FINRA “must be able to rely on its records”). And, even if Felix’s purported move could provide good cause for his default (which it cannot), he does not specify when the move occurred.¹⁶ Accordingly, Felix’s claimed change of address does not provide good cause

¹⁴ *See also* FINRA By-Laws, Article V, Sec. 4(a)(i) (providing for continuing jurisdiction over formerly registered persons); *NASD Notice to Members 97-31*, 1997 NASD LEXIS 35, at *4 (May 1997) (explaining that “a person whose registration is terminated must continue to notify [FINRA] when his or her current mailing address changes”).

¹⁵ Indeed, the Commission has observed that individuals subject to FINRA’s jurisdiction may not evade their obligations by choosing not to update their address in CRD or accept mail. *See Christine D. Memet*, Exchange Act Release No. 83711, 2018 SEC LEXIS 1876, at *15 (July 25, 2018) (the respondent could not “escape the consequences of her failure [to follow] FINRA procedures by failing to receive or claim mail properly sent to her address”); *Ashton Noshir Gowadia*, 53 S.E.C. 786, 790 (1998) (observing that a registered person “could avoid liability simply by moving” if he were permitted to ignore his responsibility to update his CRD address).

¹⁶ Felix states that he moved during the “earlier advances” of the COVID-19 pandemic but does not specify the month and year he moved. He does not identify conditions, whether related to the pandemic or otherwise, that could have prevented him from updating his address in CRD.

for his failure to participate in the disciplinary proceeding below. *See Minton*, 55 S.E.C. at 1176-78; *Dep't of Enf't v. Hodde*, Complaint No. C10010005, 2002 NASD Discip. LEXIS 4, at *6-7 (NASD NAC Mar. 27, 2002) (finding the respondent did not demonstrate good cause for his failure to participate in a disciplinary proceeding when he moved and did not update his address in CRD).

We acknowledge that Felix timely appealed the default decision to the NAC, filing it several weeks after the default decision was issued. *See* FINRA Rule 9311(a); *NASD Notice to Members 99-77*, 1999 NASD LEXIS 49, at *4. Nevertheless, we conclude that Felix has not shown good cause considering that he did not update his address in CRD, has not identified circumstances that could have prevented him from doing so, and otherwise has not provided justification for his failure to participate in the disciplinary proceeding. *See NASD Notice to Members 99-77*, 1999 NASD LEXIS 49, at *4; *Gowadia*, 53 S.E.C. at 790. Accordingly, we do not remand this case to the Hearing Officer for further proceedings. *See* FINRA Rule 9344(a). Instead, we will evaluate Felix's liability for the FINRA Rule 8210 violation based on the record.¹⁷ *See id.*; *see also Russen*, 51 S.E.C. at 677-78 & n.12.

B. Felix Violated FINRA Rule 8210

1. Felix Failed to Respond to Multiple FINRA Rule 8210 Requests

FINRA Rule 8210 requires members and persons associated with members to provide information and documents with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.¹⁸ “The rule 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.” *Howard*

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Cf. Shlomo Sharbat, Exchange Act Release No. 93757, 2021 SEC LEXIS 3647, at *15 (Dec. 13, 2021) (rejecting the applicant's argument that his late appeal should be excused by the pandemic when he did not describe how the pandemic delayed his efforts to retain counsel). While Felix provides a new address in his appellate pleadings, to date, CRD still lists as current the same residential address in Amityville, New York.

¹⁷ In accordance with FINRA Rule 9344(a), we have denied Felix's request for oral argument.

¹⁸ In particular, FINRA Rule 8210 provides, “[f]or 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 . . . inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member's or person's possession, custody or control.” FINRA Rule 8210(a)(2). The rule further states that “[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule.” FINRA Rule 8210(c). A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010. *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 n.36 (Jan. 30, 2009).

Brett Berger, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 & n.19 (Nov. 14, 2008) (quoting *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993)), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). “Delay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest.” *Rouse*, 51 S.E.C. at 588. Consequently, a violation of FINRA Rule 8210 is serious and subverts FINRA’s ability to carry out its responsibilities as a regulator, threatening both investors and the markets. *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *33 (June 14, 2013).

Felix had an unequivocal duty to cooperate with FINRA’s requests for information and documents under FINRA Rule 8210. *See Berger*, 2008 SEC LEXIS 3141, at *13. Nevertheless, he failed to respond to three FINRA Rule 8210 requests for his firm’s general ledger and annual audited report. Felix does not contend that he did not receive notice of the requests, which Member Supervision properly served by first-class certified mail at his CRD address. FINRA Rule 8210(d) (a notice issued under FINRA Rule 8210 is “deemed received” by a formerly registered person when mailed to that person’s last-known residential address listed in CRD). Indeed, the third request was successfully delivered and signed for at Felix’s CRD address.¹⁹ FINRA therefore properly served the requests, along with the accompanying warnings that Felix’s failure to comply could result in sanctions. *See* FINRA Rule 8210(d); *Evansen*, 2015 SEC LEXIS 3080, at *16. Because FINRA properly served the FINRA Rule 8210 requests, Felix is deemed to have received them.²⁰ *See* FINRA Rule 8210(d).

We also conclude that the information and documents FINRA requested lay within Felix’s “possession, custody or control” for purposes of FINRA Rule 8210. As Primex’s owner, CEO, CFO, and FINOP, Felix could have provided the firm’s general ledger and annual audited report to FINRA. *See CMG Inst. Trading*, 2009 SEC LEXIS 215, at *25 (the applicant “failed to establish that he did not have access to and control over responsive documents in possession of [a firm where] he was that firm’s CEO and president”); FINRA Rules 1220(a)(4)(A)-(B) (providing that a firm’s Principal Financial Officer and FINOP have responsibility for its financial reports and related books and records). Felix does not argue that he lacked access to or control over these documents. And, even if there was some reason Felix could not provide Primex’s general ledger and annual audited report, FINRA Rule 8210 obligated him to promptly raise and discuss that reason with FINRA. *See N. Woodward Fin. Corp.*, Exchange Act Release

¹⁹ Felix does not contend that anyone other than himself signed for the August 28, 2020 FINRA Rule 8210 request as “Mr. Wilfredo.” Nevertheless, even assuming someone other than Felix signed for the third request, Felix still received valid constructive service under FINRA Rule 8210. *See Evansen*, 2015 SEC LEXIS 3080, at *19-20 (finding it immaterial that the applicant’s father, and not the applicant himself, signed for the FINRA Rule 8210 request because the applicant received valid constructive notice when the request was mailed to his CRD address).

²⁰ Below, we discuss Felix’s argument that he responded to the FINRA Rule 8210 requests. By making this argument, Felix appears to concede that he received actual notice of the requests.

No. 74913, 2015 SEC LEXIS 1867, at *26 (May 8, 2015) (“If [a]pplicants had concerns about responding to [the Rule 8210] requests, they should have raised, discussed, and resolved them with FINRA in the cooperative spirit and prompt manner contemplated by the Rules.”), *aff’d*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016). There is no indication that Felix did so. Instead, the record reflects that he did not respond to the FINRA Rule 8210 requests at all.

In sum, the record demonstrates that Enforcement properly served three FINRA Rule 8210 requests on Felix, and those requests sought information and documents within Felix’s possession, custody, or control. Felix entirely failed to respond to the requests. As a result, the record, as supplemented, establishes that Felix violated FINRA Rules 8210 and 2010. *See Berger*, 2008 SEC LEXIS 3141, at *13-14; *Russen*, 51 S.E.C. at 677-78 & n.12.

2. Felix’s Claimed Defenses Fail

On appeal, Felix asserts several defenses that, in his view, preclude FINRA disciplinary action in this case. His arguments are without merit.

Felix asserts that he responded to Member Supervision’s requests for documents and, therefore, this disciplinary proceeding is unwarranted. Yet, Enforcement supported its motion for a default judgment with a declaration attesting that Felix did not respond to any of the FINRA Rule 8210 requests and Felix’s assertion that he did so lacks support. Felix states that he will provide evidence of his response “once the default decision is overturned,” but he forfeited the opportunity for an evidentiary hearing by failing to answer the complaint. *See* FINRA Rules 9215(f), 9269(a); *Russen*, 51 S.E.C. at 677 (observing that the applicant waived his opportunity to participate in a hearing when he failed to respond to the complaint).²¹ Furthermore, Felix could have sought leave under FINRA Rule 9346(b) to supplement the record before the NAC with evidence of his purported response, but he has not done so.²² For all of these reasons, we reject as unsupported Felix’s assertion that he responded to the FINRA Rule 8210 requests.

Felix also appears to argue that FINRA pursued this disciplinary proceeding for an improper purpose, asserting that it is an “attempt to influence the appeal [] in [his] other case regarding a [FINRA Rule] 8210 request” by “insinuat[ing] that [he] is a recidivist.” To the extent Felix challenges the motivation behind the FINRA Rule 8210 requests, his argument lacks merit because a respondent may not avoid his duty to comply with such requests by second-guessing them. *See Evansen*, 2015 SEC LEXIS 3080, at *10-11. We also reject Felix’s

²¹ *Cf. Dep’t of Enf’t v. Merhi*, Complaint No. E072004044201, 2007 NASD Discip. LEXIS 9, at *35 (NASD NAC Feb. 16, 2007) (declining to grant the respondent’s request for discovery when he ignored the disciplinary proceeding until the entry of the default decision); *Dep’t of Enf’t v. Respondent*, Complaint No. C10010146, 2003 NASD Discip. LEXIS 1, at *14 (NASD NAC Jan. 3, 2003) (observing that interests in finality and efficiency would be undermined if the respondent “were allowed, in effect, to set aside the default decision and relitigate this matter”).

²² FINRA’s Office of General Counsel notified Felix of the procedure for seeking to supplement the record before the NAC by letter dated June 1, 2021. The Subcommittee reminded Felix of this procedure by letter dated October 5, 2021.

contention that FINRA commenced this disciplinary proceeding for an improper purpose. To establish a claim of unlawful, selective prosecution, Felix must point to evidence that he was unfairly singled out and that FINRA's disciplinary action was motivated by a discriminatory purpose or desire to prevent his exercising a constitutionally protected right. *Evansen*, 2015 SEC LEXIS 3080, at *25; *Nicholas T. Avello*, 55 S.E.C. 1197, 1209 n.19 (2002) (explaining that a party claiming selective prosecution "must establish, not merely assert, that the action against him was motivated by an unjust motive"), *aff'd*, 454 F.3d 619 (7th Cir. 2006). Felix has not done so, and we find no evidence in the record that Enforcement unfairly or unlawfully targeted Felix with discipline. Instead, the record reflects that Enforcement commenced this disciplinary proceeding based on Felix's failure to provide an important financial record and report in response to multiple FINRA Rule 8210 requests.

Finally, Felix states that it would have been nonsensical for him to ignore the FINRA Rule 8210 requests in this matter while he simultaneously appealed a finding that he violated FINRA Rule 8210 in his prior disciplinary proceeding. Yet, as discussed above, Felix has foregone opportunities to present evidence that he responded to the FINRA Rule 8210 requests and has provided no justification for us to set aside the default decision. Based on the record, as supplemented, we conclude that Felix failed to respond to multiple FINRA Rule 8210 requests for information and documents and therefore affirm the Hearing Officer's liability finding. *See* FINRA Rule 9344(a); *Russen*, 51 S.E.C. at 677-78 & n.12.

VI. Sanctions

For Felix's failure to respond to three FINRA Rule 8210 requests for documents, the Hearing Officer barred him from associating with any FINRA member in any capacity. After independent review of the record and the FINRA Sanction Guidelines ("Guidelines"),²³ we affirm the Hearing Officer's sanction.

Those "who fail to respond in any manner to [FINRA] Rule 8210 requests present too great a risk to the markets and investors to be permitted to remain in the securities industry," as such a failure to respond is "fundamentally incompatible with [FINRA's] self-regulatory function." *Berger*, 2008 SEC LEXIS 3141, at *15-16. Accordingly, the Guidelines provide that a bar is standard when a respondent fails to respond to a FINRA Rule 8210 request "in any manner," absent mitigating factors.²⁴ *Berger*, 2008 SEC LEXIS 3141, at *16. Here, Felix failed to respond "in any manner" to three FINRA Rule 8210 requests for his firm's general ledger and annual audited report, and there are no mitigating factors. Therefore, a bar is consistent with the Guidelines.²⁵ *See Berger*, 2008 SEC LEXIS 3141, at *15-16.

²³ *FINRA Sanction Guidelines* (Oct. 2021), https://www.finra.org/sites/default/files/2022-09/2021_Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

²⁴ *Guidelines*, at 33.

²⁵ *Guidelines*, at 33.

We conclude that a bar is the appropriate sanction in this case.²⁶ Felix’s misconduct is aggravated by the importance of the requested documents—Primex’s general ledger and annual audited report—because such documents are critical to FINRA’s basic oversight of a firm.²⁷ See *Gremio Invs., Inc.*, Exchange Act Release No. 64481, 2011 SEC LEXIS 1695, at *14-15 (May 12, 2011) (explaining that reporting requirements are “important to monitor the financial status of broker-dealers and to protect investors”); *N. Woodward Fin.*, 2009 SEC LEXIS 2796, at *11, 19 (explaining that a firm’s general ledger is a “key foundation document” that should reflect a firm’s financial condition). Primex’s general ledger and annual audited report were of particular importance here considering FINRA’s regulatory interest in monitoring any recurring issues with mis-recorded expenses. See *Felix*, 2021 FINRA Discip. LEXIS 7, at *22-24; *Meyers Assoc., L.P.*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869, at *23-24 (July 26, 2019) (explaining that the mis-recording of personal expenses as business expenses in the firm’s general ledger caused inaccuracies in its regulatory filings). We also find it aggravating that Felix failed to respond to three FINRA Rule 8210 requests, two of which warned that he personally could face sanctions for non-compliance.²⁸

Felix has not identified any mitigating factors and we find no evidence of mitigation in the record.²⁹ We acknowledge Felix’s statement that he moved during the COVID-19 pandemic. However, we do not find Felix’s purported change of address to be mitigating because, as discussed above, he does not specify when he moved or describe any circumstances that could have interfered with his ability to comply with regulatory requirements—including the requirement that he update his residential address in CRD. See *John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *20-21 (Oct. 8, 2015) (personal circumstances may be mitigating, but only where they are associated with the misconduct); *pet. for review denied in part and remanded in part*, 873 F.3d 297 (D.C. Cir. 2017), *aff’d*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216 (Aug. 23, 2019), *aff’d*, 980 F.3d 103 (D.C. Cir. 2020). Felix’s assertions that FINRA pursued this matter for an improper purpose also are not mitigating because they are unsupported and, in any event, “mitigation cannot be based on a respondent’s second guessing the importance of an investigation.” *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *21 (Apr. 11, 2008), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009).

²⁶ *Guidelines*, at 1 (Overview) (explaining that the Guidelines “are not intended to be absolute”).

²⁷ *Guidelines*, at 33 (providing that the importance of the information requested is a principal consideration when a respondent entirely fails to respond).

²⁸ See *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 8) (“Whether the respondent engaged in numerous acts and/or a pattern of misconduct.”); *Id.* at 8 (Principal Considerations in Determining Sanctions, No. 14) (Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA . . . that the conduct violated FINRA rules.”)

²⁹ See *Guidelines*, at 33 (“Where mitigation exists . . . consider suspending the individual in any or all capacities for up to two years.”).

Considering Felix's complete failure to respond to multiple FINRA Rule 8210 requests, the importance of the information requested, and the absence of any mitigating factors, we conclude that a bar is the appropriate sanction. A bar will protect the investing public from an individual who is unwilling to cooperate with FINRA's investigative requests and deter others from similar misconduct. *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *26 (Sept. 10, 2010) (explaining that bar would protect investors from any further FINRA Rule 8210 violations by the applicant and encourage cooperation by others), *aff'd*, 436 F. App'x 31 (2d Cir. 2011); *see also Saad*, 2019 SEC LEXIS 2216, at *19 (explaining that a bar may be appropriately remedial when it serves the public interest). Based on the foregoing, and considering the totality of the circumstances, we affirm the bar imposed by the Hearing Officer.

VII. Conclusion

We agree with the Hearing Officer that Felix defaulted and find that Felix failed to establish good cause for his failure to participate in the proceeding below. Based on our independent review of the record, we affirm the Hearing Officer's findings and conclude that Felix violated FINRA Rules 8210 and 2010 by failing to respond to three requests for documents. We also conclude that the appropriate sanction is a bar from associating with any FINRA member in any capacity, and we therefore affirm the Hearing Officer's sanction. The bar will become effective immediately upon service of this decision.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell
Senior Vice President and Corporate Secretary