

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARCO ANTONIO RIVERA
(CRD No. 7003078),

Respondent.

Disciplinary Proceeding
No. 2020068740302

Hearing Officer–BEK

DEFAULT DECISION

April 14, 2022

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents to FINRA staff.

Appearances

For the Complainant: Michelle Galloway, Esq., and Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement properly served Respondent Marco Antonio Rivera with the First and Second Notices of Complaint and the Complaint. The Complaint alleges that Rivera violated FINRA Rules 8210 and 2010 by failing to provide information and documents requested by FINRA staff. Rivera did not file an Answer to the Complaint. As a result, on March 2, 2022, Enforcement filed a motion for entry of default decision and request for imposition of sanctions (“Default Motion”). The Default Motion is supported by the declaration of Enforcement counsel Michelle Galloway (“Galloway Decl.”) and 16 supporting exhibits (CX-1 through CX-16). Rivera did not respond to the Default Motion.

For the reasons set forth below, I find Rivera in default, deem the allegations in the Complaint admitted, and grant Enforcement’s Default Motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Rivera entered the securities industry in 2018 when he associated with J.P. Morgan Securities LLC (“JPM”) and registered as an Investment Company and Variable Contacts Products Representative. On November 23, 2020, JPM filed a Uniform Termination Notice of Securities Industry Registration (Form U5) stating that Rivera was terminated for applying for and receiving a Small Business Administration (“SBA”) grant “without [having] a legitimate business purpose.”¹

B. FINRA's Jurisdiction

Although Rivera is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws. This is because (1) the Complaint was filed within two years after November 23, 2020, the effective date on which he ceased to be associated with a FINRA member firm, and (2) the Complaint charges him with failing to provide information and documents requested by FINRA staff during the two-year period after November 23, 2020.

C. Origin of the Investigation

In December 2020, FINRA staff began investigating the circumstances of Rivera's termination from JPM and whether he had violated any federal securities law or FINRA rules. Rivera failed to timely and fully provide requested information and documents, leading to this disciplinary proceeding.²

D. Respondent's Default

Enforcement served Rivera with the First Notice of Complaint and the Complaint on December 8, 2021, and a Second Notice of Complaint and the Complaint on January 6, 2022. In each case, Enforcement served Rivera by first-class certified mail, return receipt requested, at his last known residential address as reflected in the Central Registration Depository (“CRD Address”). Enforcement also sent courtesy copies to Rivera by Federal Express and to his email address.³

Pursuant to FINRA Rule 9215, Rivera was required to file an Answer or otherwise respond to the Second Notice of Complaint by January 24, 2022. He has not done so. I thus find

¹ Complaint (“Compl.”) ¶¶ 2-3; Complainant's Exhibit (“CX-”) 1, at 1; CX-2, at 1.

² Compl. ¶¶ 5, 30; Galloway Decl. ¶¶ 4-5.

³ Galloway Decl. ¶¶ 10-12, 20-21; CX-10; CX-11; CX-14; CX-15. In accordance with FINRA Rule 9215(f), the Second Notice of Complaint informed Rivera that his failure to answer the Complaint would allow the Hearing Officer, in the exercise of his discretion, to treat as admitted the Complaint's allegations and to enter a default decision against him.

that he has defaulted. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion and deem the allegations in the Complaint admitted.⁴

E. Rivera Failed to Provide Information and Documents

FINRA Rule 8210 requires anyone subject to FINRA’s jurisdiction to provide the information and testimony requested by FINRA staff and “is at the heart of the self-regulatory system for the securities industry.”⁵ Because FINRA lacks subpoena power, it relies on Rule 8210 to obtain information necessary to carry out “its investigations and fulfill its regulatory mandate.”⁶ The failure to fully and timely respond to information requests violates FINRA Rules 8210 and 2010.⁷

The single cause of action in the Complaint alleges that Rivera failed to provide information and documents in response to Rule 8210 requests. On February 3 and 18, 2021, FINRA staff sent Rivera written requests to provide (1) any applications or other documents submitted to SBA or other governmental entity regarding financial aid he may have sought in connection with the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Coronavirus Aid, Relief, and Economic Security Act (known as the CARES Act), and the Paycheck Protection Program and Health Care Enhancement Act, (2) bank and brokerage account statements from October 1, 2019, through the present, tax returns from 2017 through the present, and related information, and (3) information and documents pertaining to any outside business activities he had. FINRA staff sent both requests by certified and first-class mail to Rivera’s CRD Address. FINRA staff also emailed copies of the requests to Rivera’s email address.⁸

In response to FINRA staff’s second 8210 request, Rivera was required to provide information and documents by March 4, 2021, but he failed to do so.⁹ On March 30, 2021, FINRA staff sent Rivera a Notice of Suspension pursuant to FINRA Rule 9552. The Notice of Suspension informed him that he would be suspended from associating with any FINRA member firm in any capacity on April 23, 2021, unless he provided FINRA the requested information and documents.¹⁰

⁴ Rivera may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

⁵ *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).

⁶ *CMG Inst’l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009).

⁷ *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *24-25 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

⁸ Compl. ¶¶ 6-7, 9-10; CX-3; CX-4.

⁹ Compl. ¶¶ 8-9, 11; CX-4, at 1.

¹⁰ Compl. ¶ 12; CX-6, at 1. The Notice of Suspension also informed Rivera that if he was suspended, and failed to request termination of that suspension, he automatically would be barred on July 6, 2021. CX-6, at 2.

On April 14, 2021, Rivera provided bank and brokerage account statements for three accounts, his 2019 tax return, several statements in response to the information requested by FINRA staff including one statement noting where he had deposited the SBA loan funds he had received.¹¹ However, he did not provide (1) his SBA application or other documents he submitted to the SBA or other governmental entity in connection with his request for aid, (2) his 2017 or 2018 tax returns, or (3) complete information regarding his brokerage and bank accounts.¹² FINRA staff emailed Rivera on April 24, 2021, notifying him of the deficiencies in his response. This email also informed Rivera that the effective date of any suspension would be extended until April 27, 2021, to enable him to submit the outstanding materials.¹³ When Rivera failed to supplement his response, FINRA staff notified him on April 27, 2021, that he was suspended, and that he would be automatically barred on July 6, 2021, if he did not request termination of the suspension.¹⁴

On July 2, 2021, Rivera submitted his 2017 and 2018 tax returns, and some additional brokerage statements, but he still failed to submit (1) his SBA application or other documents he submitted to the SBA or other governmental entity in connection with his request for aid, and (2) complete information and documents regarding his bank and brokerage accounts.¹⁵

On July 15, 2021, FINRA staff sent a letter to Rivera notifying him of his outstanding deficiencies. This letter also notified Rivera that the automatic bar would not be imposed, but he would remain suspended until he fully complied with the Rule 8210 requests and sought termination of his suspension.¹⁶

On September 10, 2021, Rivera indicated in a phone conversation he had with FINRA staff that he would provide the missing information and documents. But he failed to do so, and he had no further communication with FINRA until December 31, more than three weeks after the Complaint was filed.¹⁷ On December 31, 2021, he notified FINRA staff that he had submitted a Freedom of Information Act (“FOIA”) request to obtain a copy of his SBA loan application. He did not, however, provide a copy of that request or any information regarding the use of his SBA loan funds. He also did not provide copies of the previously requested account statements detailing where he deposited his SBA loan funds or copies of statements for two additional bank accounts. As of the date of this Default Decision, Rivera remains suspended pursuant to the Notice of Suspension.¹⁸

¹¹ Compl. ¶ 15; Galloway Decl. ¶ 32; CX-7, at 1.

¹² Compl. ¶ 16; Galloway Decl. ¶ 32; CX-7, at 1.

¹³ Compl. ¶ 17; CX-7, at 1.

¹⁴ Compl. ¶ 18; CX-8.

¹⁵ Compl. ¶ 19; Galloway Decl. ¶ 33.

¹⁶ Compl. ¶¶ 20-21; CX-9.

¹⁷ Compl. ¶¶ 23-24; Galloway Decl. ¶ 34.

¹⁸ Galloway Decl. ¶¶ 5, 34.

Because Rivera failed to timely and fully provide the requested information and documents, I find that he has violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend that, if an individual provided a partial but incomplete response to a Rule 8210 request, a bar should be standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.¹⁹ Factors when considering the appropriate sanction include the following:

- Importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request.
- Number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.
- Whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.²⁰

Here, FINRA staff sought information and documents from Rivera to further their investigation into whether Rivera had undisclosed outside business activities. Although Rivera provided some of the requested documents, he did so sporadically over an extended period (10 months) and only after extensive coaxing in the form of repeated requests, a warning of suspension and bar, and actual suspension. His responses to the Rule 8210 requests are still incomplete, and I find that they fail to constitute substantial compliance with all aspects of the requests.

Although Rivera belatedly informed FINRA staff that he submitted a FOIA request for his SBA application, he did not provide that request or information regarding the use of the SBA funds he received. He also failed to provide information regarding any other government entity applications or documents he submitted in connection with a request for aid, and he failed to provide his complete bank and brokerage account statements for the accounts into which he deposited his SBA loan funds. The information sought (and not provided) was material to

¹⁹ FINRA Sanction Guidelines at 33 (2021), <http://www.finra.org/sanctionguidelines>. The Guidelines also suggest a monetary fine from \$10,000 to \$77,000. *Id.* Fines, however, generally are not appropriate when a bar is imposed and there is no customer loss. *Id.* at 10. Here, there is no assertion in the Complaint that a customer sustained a loss. Because I impose a bar for Rivera's violation of Rules 8210 and 2010, I am not imposing a fine.

²⁰ *Id.* at 33.

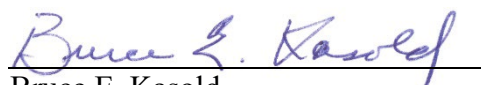
FINRA's investigation and necessary to complete FINRA's regulatory mandate to fully investigate potential rule violations and to protect the investing public.²¹

Although Rivera submitted some information and documents, his submissions were untimely, sporadic, and incomplete. Even after repeated requests, he failed to provide information and documents that were material to FINRA's investigation. I find it unlikely that a continued suspension of Rivera will prompt him to fully comply with the Rule 8210 requests. I thus find that a bar in all capacities from the securities industry is appropriate.

IV. Order

Respondent Marco Antonio Rivera is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents requested by FINRA staff, in violation of FINRA Rules 8210 and 2010, as alleged in the sole cause of the Complaint.

The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Bruce E. Kasold
Hearing Officer

Copies to:

Marco Antonio Rivera (via email, overnight courier, and first-class mail)
Michelle Galloway, Esq. (via email)
Loyd Gattis, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

²¹ *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010) (“Without subpoena power, [FINRA] must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate.”), *petition for review denied*, 436 F. App'x 31 (2d Cir. 2011).