

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Shlomi S. Eplboim
Tarzana, CA,

Respondent.

DECISION

Complaint No. 2011025674101

Dated: May 14, 2014

Respondent failed to comply fully with FINRA requests to provide information and documents. Held, findings and sanction affirmed.

Appearances

For the Complainant: Mark P. Dauer, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Shlomi S. Eplboim (“Eplboim”) appeals a March 12, 2013 Hearing Panel decision pursuant to FINRA Rule 9311. The Hearing Panel found that Eplboim failed to comply fully with FINRA requests for information and documents concerning his outside business activities, in violation of FINRA Rules 8210 and 2010.¹ For his misconduct, the Hearing Panel barred Eplboim from associating with any member in any capacity. After an independent review of the record, we affirm the Hearing Panel’s findings and the sanction it imposed.

¹ The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

I. Facts

A. Eplboim and His Outside Business Activities

Eplboim entered the securities industry in August 1991 and worked for several FINRA member firms. From March 2009 to August 2011, Eplboim was registered as a general securities representative with Brookstone Securities, Inc. (“Brookstone”). Eplboim has not associated with any other member since he voluntarily left Brookstone.

In 2004, prior to joining Brookstone, Eplboim formed two limited liability companies, Ebandco Real Estate and Ebandco Holdings, LLC (collectively, “Ebandco”), which owned low-income rental properties in Tennessee. Approximately 20 of Eplboim’s friends and clients, including Brookstone customers, invested in Ebandco. Eplboim managed the entities for the investors, but he did not have an ownership interest.

After joining Brookstone, Eplboim disclosed Ebandco as an outside business activity. Brookstone approved the outside business activity, and it required Eplboim to provide copies of his and Ebandco’s bank and securities account statements under a heightened supervision plan. The heightened supervision plan began in December 2010.

In connection with a 2009 FINRA examination, staff from FINRA’s Los Angeles district office reviewed Eplboim’s activities with Ebandco for the period 2007 through March 2009. At FINRA staff’s request, Eplboim produced certain documents requested by FINRA for the period FINRA examined.²

In May 2011, both Ebandco Real Estate and Ebandco Holdings, LLC, filed for bankruptcy to protect their assets and properties from foreclosure. In October 2011, Eplboim filed for personal bankruptcy because he and his spouse personally guaranteed a large loan for Ebandco.

B. Eplboim’s Failures to Provide Requested Documents to FINRA

In August 2011, FINRA staff from the Boca Raton district office commenced an examination of Eplboim’s outside business activities for the period March 2009 through August 2011. FINRA staff sought information concerning Ebandco because it had been two years since FINRA’s last examination of Eplboim’s outside business activities. FINRA staff also found an anonymous allegation posted on the “Rip-off Report” website alleging that Eplboim and Ebandco stole \$100,000 from an investor.³

² It is not clear from the record what documents Eplboim produced.

³ FINRA staff also had concerns, based on the still-open 2009 examination, that Eplboim may have borrowed money from Ebandco and commingled Ebandco’s funds with his own.

During the 2011 examination, FINRA staff reviewed FINRA's prior examination of Eplboim and his outside business activities. FINRA staff also conducted an on-site visit at Brookstone on August 23, 2011, and met with Richard Nguyen ("Nguyen"), Eplboim's supervisor and branch supervisor of Brookstone. Nguyen provided to FINRA an incomplete set of bank and securities account statements, for the period October 2010 to June 2011, that Eplboim provided to Brookstone in accordance with his heightened supervision plan. Brookstone also provided FINRA a list of the investors in Eplboim's investment, including whether they were customers of Brookstone, their percentage ownership, and the value of their investment, but it is unclear to what time period the list pertained. FINRA staff also later spoke with Brookstone's chief compliance officer, Kyong Kim ("Kim").⁴

On September 9, 2011, FINRA staff sent Eplboim a request for information pursuant to FINRA Rule 8210 requesting 17 categories of documents. Among other things, the request sought, for the time period September 1, 2010, to August 31, 2011, copies of Eplboim's securities account statements; copies of Eplboim's and Eplboim's bank account statements from four banks; supporting documents for deposits greater than \$1,000 and payments from the bank accounts; copies of monthly and quarterly customer statements representing investor account balances in Eplboim and its related investments; Eplboim's general ledger and audited financial statements; an accounting of Eplboim's compensation from his involvement in Eplboim; lists of the investors in and owners of Eplboim, including percentage ownership, value of investment, and whether they were customers of Brookstone; and copies of Eplboim's emails from his personal account. FINRA staff wanted the documents to examine the use and flow of money at Eplboim to determine whether Eplboim had misappropriated any investor funds. FINRA staff wanted Eplboim's personal emails because an earlier production revealed that Eplboim had used his personal email account to communicate with an advertiser regarding bond advertising.

The September 9 request asked that Eplboim provide the information and documents no later than September 23, 2011, and warned him that his failure to comply with the request could result in sanctions, including a permanent bar from the securities industry. In response to an extension request by Eplboim, FINRA staff extended the response deadline to October 7, 2011. Eplboim, however, did not respond by the extended deadline.

On October 11, 2011, FINRA staff sent Eplboim a second request for information. The October 11 request demanded the same information and documents as requested in the September 9 request. Like the earlier request, the October 11 request also warned Eplboim that his failure to comply with the request could result in disciplinary action.

⁴ From the record, it is unclear why Brookstone produced to FINRA an incomplete set of bank and securities account statements for the period of Eplboim's heightened supervision plan. After FINRA staff met with Nguyen on August 23, 2011, and subsequent to Brookstone's production of documents to FINRA, FINRA staff did not speak to Nguyen about any missing documents. FINRA staff likewise did not speak to Allen Thomas, who supervised Nguyen, about missing documents. FINRA staff, however, did have subsequent correspondence and a telephone conversation with Kim to confirm that she had given FINRA staff all of the documents that Brookstone had related to Eplboim and the Rule 8210 requests at issue.

In an October 17, 2011 email, Eplboim responded, in part, to the October 11 request, but he did not produce any of the requested documents. For five of the specific requests, Eplboim responded that the requested documents did not exist. In response to the request for copies of Eplboim's securities account statements and his and Eplboim's bank account statements, for the period September 1, 2010, to August 31, 2011, Eplboim stated that "[a]ll were provided to Brookstone [S]ecurities every month under [h]eightened supervision agreements and I understood most or all of what you are asking [for] copies were provided to you by [Brookstone]." In response to the request for supporting documentation for deposits greater than \$1,000, supporting documentation for payments, the Eplboim general ledger, an accounting of Eplboim's compensation for his involvement with Eplboim, and Eplboim financial statements for the period September 1, 2010, to August 31, 2011, Eplboim stated that he had "[a]lready provided this lengthy, costly and time consuming info in the past to the LA FINRA office" and "Eplboim do not have resources, time, or money to handle your request." In response to the request for an accounting representing the dollar and percentage ownership for each investor in Eplboim for the period ending September 30, 2010, a listing of customers from Brookstone who also were investors in Eplboim for the period September 1, 2010, to August 31, 2011, and a list of investors and their current ownership value for the period ending August 31, 2011, Eplboim responded that both Brookstone and the FINRA Los Angeles office already had the information and nothing had changed. In response to the request for copies of his personal emails, Eplboim objected on the grounds that the email account "contains priviledged [sic], private, and intimate personal info." Eplboim did produce, although it was not requested, a copy of his personal bankruptcy petition.

On October 25, 2011, FINRA staff sent Eplboim a third request for information. The request demanded the same information and documents as requested in the September 9 and October 11 requests. The October 25 request noted that Eplboim's earlier response was "substantially incomplete," and his objections to the requested items were insufficient under FINRA Rule 8210. The request also informed Eplboim that his prior production of documents to Brookstone or to another FINRA office "[did] not obviate the need for [him] to produce all documents and information requested." With respect to FINRA's request for copies of Eplboim's personal emails, the October 25 request provided that FINRA staff was aware of certain emails demonstrating that Eplboim used his personal email account for securities business, so he "was required to provide staff with copies of the requested [emails]." For the remaining 11 specific requests for which documents existed, the October 25 request recited each request and Eplboim's corresponding partial response, and it stated that, "[i]rrespective of this assertion, you must produce copies of these documents to FINRA's Florida District Office." Like the earlier requests, the October 25 request warned Eplboim that his failure to comply with the request could result in disciplinary action and expose him to sanctions, including a bar.

By email dated October 26, 2011, Eplboim informed FINRA staff that he could not respond to the FINRA Rule 8210 request until the end of the November because he was in Tennessee. He further stated that he had contacted his bank, it would take approximately four weeks to get bank statements, and the banks would charge for the statements. FINRA staff immediately responded by email that the deadline to respond to the request for information was November 2, 2011, and that Eplboim was obligated under the rules to respond to the staff's

requests fully, promptly, and without qualification by the deadline. The next day, Eplboim responded that when he returned on November 21, assuming he got the information from his bank, he would immediately provide the documents and “other items that are most likely [sic] in storage or with our old accountants and attorneys.”

During a telephone conversation between Eplboim and FINRA staff, Eplboim said that he was going to get an estimate from the banks for the costs of the documents. Eplboim did not provide an estimate to FINRA. By email dated October 27, 2011, FINRA wrote to Eplboim that “[FINRA] staff never agreed to reimburse you any monies in connection to the 8210 request” but, if he was unable to produce the documents, staff would “entertain alternative measures in order to get the documents and information.”

C. Eplboim’s Post-Complaint Actions and Communications Concerning FINRA’s Requests for Information

Eplboim did not produce any of the requested documents to FINRA. Accordingly, on March 14, 2012, FINRA’s Department of Enforcement (“Enforcement”) filed a one-cause complaint, alleging that Eplboim failed to respond to requests for information and documents, in violation of FINRA Rules 8210 and 2010.

In April 2012, Eplboim emailed Kim, Brookstone’s chief compliance officer. Eplboim told Kim that FINRA was requesting the production of certain documents from Eplboim and asked Kim to send to FINRA all the documents that Eplboim submitted to Brookstone under his heightened supervision plan. Kim informed him that “[FINRA] already [has] what we have here” and that the “only bank statements that [Kim] received from [Eplboim] were those provided for the last branch inspection.” Kim told Eplboim that FINRA’s request for information sought additional documents.⁵ Eplboim forwarded this email exchange to FINRA staff, and FINRA staff informed Eplboim that, pursuant to FINRA Rules, Eplboim could inspect or copy FINRA staff’s investigative file.

In June 2012, following on discussions between the parties in which Eplboim asked FINRA staff to tell him what requested documents were still outstanding that Brookstone did not provide, FINRA staff referred Eplboim to the complaint and asked him, “to be safe,” to provide a cost estimate for all of the requested documents, regardless of whether he believed he previously provided the documents to FINRA staff or Brookstone. Eplboim did not provide an estimate.

Two months later, after prompting by FINRA staff, Eplboim emailed FINRA staff that they already had copies of Eplboim’s bank account statements in their possession, and that he would provide an estimate for supporting documents for deposits greater than \$1,000 and payments after FINRA staff identified the deposits and payments for which they sought supporting documentation. Eplboim also stated that certain banks would charge \$3 to \$4 for

⁵ FINRA staff also told Eplboim that Kim did not provide to FINRA staff all the requested documents.

copies of checks, and, if FINRA staff identified which items they sought, he could figure out the exact cost because the “[Eplboim] members are not [inclined] to pay for these cost [sic].”

Later that same month, FINRA staff requested that Eplboim provide contact information for the person who held the bank statements, so Enforcement could get an estimate of the costs for copies directly from that person. Instead, Eplboim offered to obtain supporting documentation himself for certain bank statement entries if FINRA staff would mark and identify the items on the account statements in their possession. He also declined to grant FINRA staff authorization to obtain the statements and supporting documents directly from the banks.

Eplboim did not produce to FINRA any of the documents requested in the September 9, 2011 request for information or the two follow-up requests. As a result, FINRA instituted these disciplinary proceedings. The parties participated in a one-day hearing in this matter on November 8, 2012. Two witnesses—a FINRA examiner and Eplboim—testified at the hearing.⁶ On March 12, 2013, the Hearing Panel issued its decision.

This appeal followed. The parties were scheduled to present oral arguments on August 13, 2013. Less than three hours before the scheduled oral arguments, however, Eplboim emailed that he was unable to attend because he was at the dentist office in “great pain.” Despite a response that morning from counsel to the Subcommittee of the National Adjudicatory Council strongly encouraging Eplboim to attend, Eplboim did not appear, and only Enforcement presented argument. Eplboim later offered evidence from his dentist regarding his visit the morning of August 13, which was admitted into the record, and he moved for a telephonic hearing to present oral argument. The parties thereafter presented oral arguments by telephone on October 8, 2013.

II. Discussion

The Hearing Panel found that Eplboim failed to provide to FINRA the documents set forth in FINRA’s September 9, 2011 request for information and its follow-up requests, in violation of FINRA Rules 8210 and 2010. For the reasons set forth below, we affirm the Hearing Panel’s findings.

A. FINRA Rules 8210 and 2010

FINRA Rule 8210 requires persons subject to FINRA’s jurisdiction to provide information requested by FINRA with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. Because FINRA lacks subpoena power, it must rely upon FINRA Rule 8210 “to police the activities of its members and associated persons.” *Joseph*

⁶ Eplboim did not file a witness list or exhibit list by the deadline established in the scheduling order. During the final pre-hearing conference, Eplboim acknowledged his failure, but asked that he still be allowed to call witnesses. The Hearing Officer ruled that Eplboim could not call any witnesses or introduce any exhibits, other than in rebuttal, absent an agreement from Enforcement. *See infra* Part II.B.4.

Patrick Hannan, 53 S.E.C. 854, 858-59 (1998). “The failure to respond to [FINRA] information requests frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.” *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009).

Members and associated persons must cooperate fully in providing requested information. *See Michael David Borth*, 51 S.E.C. 178, 180 (1992). Associated persons “may not ignore [FINRA] inquiries . . . nor take it upon themselves to determine whether information is material to [a FINRA] investigation of their conduct.” *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009); *see also Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2781, at *17 (Dec. 11, 2006) (stating that associated persons “may not ‘second guess[]’ an [FINRA] information request”). An associated person’s refusal to respond to a request made pursuant to FINRA Rule 8210 also violates FINRA Rule 2010.⁷ *See Dep’t of Enforcement v. Reichman*, Complaint No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *28-29 (FINRA NAC July 21, 2011).

B. Eplboim Failed to Provide the Requested Documents in Violation of FINRA Rules 8210 and 2010

In September 2011, FINRA staff had questions concerning Eplboim’s financial dealings with Epandco, including whether Eplboim misappropriated any investor funds. Accordingly, on September 9, 2011, FINRA staff sent Eplboim a request for information pursuant to FINRA Rule 8210 seeking 17 categories of documents for the time period September 1, 2010, through August 31, 2011, including copies of his and Epandco’s bank and securities account statements, supporting documentation for deposits greater than \$1,000 and payments, a list of Epandco investors (including ownership percentage and whether they were customers of Brookstone), an accounting of Eplboim’s compensation with respect to Epandco, and copies of Eplboim’s personal emails.

After Eplboim failed to respond to the initial request and produce any documents to FINRA, FINRA staff sent two follow-up requests for the same documents. In all three requests, FINRA staff warned Eplboim that his failure to comply with the request could result in disciplinary action or sanctions, including a bar from the securities industry. FINRA staff wanted the documents to examine the flow of money to determine whether Eplboim misappropriated any investor funds.⁸ FINRA staff wanted copies of Eplboim’s personal emails because he used the email account to communicate regarding securities activities.

⁷ FINRA Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade. FINRA Rule 0140 subjects associated persons to all rules applicable to FINRA member firms.

⁸ FINRA staff testified that the bank and securities account statements, in particular, were the best way to find the sources and use of funds to determine where the money came from, whether the money belonged to investors, and how the money was spent. FINRA staff wanted the supporting documentation for large deposits and payments to follow the flow of money and determine the sources and use of funds.

Although Eplboim provided a partial written response to FINRA, there is no dispute that Eplboim personally never produced any of the documents FINRA requested. FINRA's September 9, 2011 request for information sought documents concerning Eplboim's outside business activity for the time period immediately preceding the request, September 1, 2010, through August 31, 2011. Some documents—such as Eplboim's personal bank statements and emails—should have been readily available to Eplboim. Other documents—including Eplboim's audited financial statements, lists of the investors in and owners of Eplboim, an accounting of Eplboim's compensation, bank and securities account statements, and supporting documentation for large deposits and payments—also should have been readily available to Eplboim, who was the manager of Eplboim. Further, considering that the Eplboim entities filed for bankruptcy in May 2011—the middle of the time period of the requests for information—and Eplboim continued to manage the entities throughout the Chapter 11 proceedings, at least some of the requested documents, or similar documents, would have seemed to be available to Eplboim because of their bearing on the bankruptcy proceedings. Moreover, Eplboim produced to Brookstone some of his and Eplboim's requested bank and securities account statements for the relevant time period, and he produced to FINRA in 2009 other documents relating to Eplboim, demonstrating he had control of such documents, at least at that time. Even Eplboim acknowledges that certain responsive documents were available to him and could be provided to FINRA.⁹

If an associated person is unable to provide the information requested in a FINRA Rule 8210 request, there remains a duty to explain that inability. *See Rooney A. Sahai*, Exchange Act Release No. 55046, 2007 SEC LEXIS 13, at *13 (Jan. 5, 2007). We find that Eplboim did not satisfy this duty to explain his inability, and we reject the various arguments he makes to excuse his failure to produce the documents.

1. Eplboim's Prior Production of Documents to FINRA or His Firm Does Not Excuse His Failure to Provide the Requested Documents

Eplboim argues that his prior production of documents to FINRA or Brookstone under his heightened supervision plan relieved him of his obligation to produce the requested documents. We disagree.

Eplboim's prior production to FINRA, in connection to the 2009 examination, does not excuse his failure to produce documents responsive to the FINRA Rule 8210 requests at issue. In the latter requests, FINRA sought the documents from September 1, 2010, through August 31, 2011, to examine the flow of money during that time period. The 2009 FINRA examination

⁹ In October 2011, in response to the third request for documents, Eplboim emailed FINRA staff that he would provide to FINRA by the end of November any information he obtained from the bank "along with other items that are most likely [sic] in storage or with our old accountants and attorneys." Despite his assurances, Eplboim did not do so.

concerned a different time period and, thus, documents related to the 2009 examination are completely unresponsive to the requests at issue.¹⁰

Likewise, Eplboim's production of documents to Brookstone under his heightened supervision plan does not excuse his failure to produce documents to FINRA. Epancco was Eplboim's outside business activity. By reviewing Epancco's bank and securities account accounts, Brookstone did not assume Eplboim's responsibility to provide FINRA with documents related to his outside business. On appeal, Eplboim argues that 14 out of the 17 categories of documents were provided to FINRA by Kim, the Chief Compliance Officer of Brookstone.¹¹ The record does not support this argument. Eplboim's heightened supervision plan at Brookstone began in December 2010, three months after the requested time period began. Notwithstanding Eplboim's heightened supervision plan, Brookstone provided FINRA staff only approximately 30 percent of the requested bank and securities account statements, and many of the statements were missing pages.¹² These statements represent only a small portion of the 17 different categories of documents FINRA sought from Eplboim.

Eplboim had the obligation under FINRA Rule 8210 to produce the requested documents to FINRA, and neither his production to FINRA nor Brookstone's 2011 production of any portion of the requested documents to FINRA excused him of this obligation. *See Pearson*, 2006 SEC LEXIS 2781, at *16 (rejecting respondent's argument that he did not need to produce the requested documents because "nearly all, if not all, of the same documents . . . had already been produced by [his firm]") (internal quotations omitted); *see also Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *13 (Nov. 8, 2007) ("A belief that [FINRA] does not need the requested information provides no excuse for a failure to provide it.") (internal quotations omitted). Further, Eplboim "is responsible for responding *directly* to the [FINRA] requests for information" and "[cannot] abdicate his duty by relying on others . . . to perform it." *See Borth*, 51 S.E.C. at 181 (emphasis added) (rejecting respondent's attempt to shift responsibility to respond to NASD Rule 8210 requests when NASD advised him that it was his responsibility to respond directly and that NASD had not received the information that respondent said had been provided); *accord Michael Markowski*, 34 F.3d 99, 104 (2d Cir. 1994) (rejecting the argument that the senior officer of a brokerage firm relied on reasonable delegation

¹⁰ The FINRA examiner who conducted the 2011 examination at issue testified that he had several conversations with the FINRA staff who conducted the 2009 examination, and he reviewed the documents that Eplboim provided in connection with the 2009 examination. He further testified that there was "no overlap" between the documents requested in 2011 and the documents Eplboim provided in 2009 because the 2009 examination predated the 2011 examination.

¹¹ Eplboim does not describe which 14 categories of documents Kim allegedly supplied to FINRA. Eplboim also argues that 14 out of the 18 categories of documents were supplied by Kim. The record provides, however, FINRA requested only 17 categories of documents.

¹² Eplboim did not demonstrate that he provided to Brookstone any responsive documents, other than the bank and securities account statements, in accordance with his heightened supervision plan.

of obligations under NASD Rule 8210 to an employee, where the senior officer was made aware that NASD's demand for access to requested documents was not being met); *John A. Malach*, 51 S.E.C. 618, 620 (1993) (rejecting respondent's attempt to shift responsibility to respond to NASD requests for information to his former firm).

2. Eplboim, Not Epancco, Is Obligated Under FINRA Rule 8210 to Produce the Requested Documents

For many remaining documents that Eplboim did not provide to FINRA, Eplboim argues he could not produce the documents because the Epancco entities, due to their respective bankruptcies, did not have the financial resources to produce the documents. Eplboim further argues he did not have authorization from the members of Epancco or the bankruptcy court to pay for copies of the account statements or to grant FINRA staff access to the accounts.

Pursuant to FINRA Rule 8210, FINRA has the right to inspect the books, records, and accounts of any associated person with respect to any matter involved in the investigation, complaint, examination, or proceeding. FINRA Rule 8210 may be used “[f]or the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules,” including investigating an associated person's outside business activities. *Dep't of Enforcement v. CMG Inst. Trading, LLC*, Complaint No. E8A20050252, 2008 FINRA Discip. LEXIS 3, at *26-27 (FINRA NAC Feb. 20, 2008), *aff'd*, 2009 SEC LEXIS 215 (Jan. 30, 2009) (affirming FINRA's authority to request that an associated person produce documents of a non-member third-party entity that he owned and controlled and that was the indirect source of a \$3 million deposit into an account of the person's member firm); *accord Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 SEC LEXIS 552, at *13 (Feb. 11, 2013) (order denying stay) (affirming FINRA's authority to request information related to an associated person's outside consulting business). Eplboim, as an associated person, not Epancco, was obligated to respond to the requests for information and bear the costs associated with responding to the requests.¹³

3. Eplboim Did Not Make a Good-Faith Effort to Obtain the Requested Documents and He Did Not Give FINRA a Means to Obtain the Requested Documents

There is no evidence in the record that persuades us that Eplboim's (or Epancco's) financial situation prevented him from complying with the requests. Prior to filing the complaint, FINRA staff told Eplboim that they never agreed to reimburse him in connection with the requests, but they would “entertain alternative” measures to get the documents. Later FINRA staff asked for a complete cost estimate for the production of all the documents or access to his

¹³ For the same reasons, we are not persuaded by Eplboim's argument that FINRA erred by not reaching out to Epancco members or their counsel directly. As an associated person, Eplboim had the responsibility to respond to FINRA Rule 8210 requests.

and Eplboim's bank accounts.¹⁴ Despite FINRA's offers, Eplboim never provided a complete estimate and declined to grant FINRA staff access to the accounts, arguing that the Eplboim members did not approve.¹⁵

On appeal, Eplboim argues that he did, in fact, provide an estimate. This estimate, an email in which he said that two banks would supply copies of checks for \$3 or \$4 per check, was supplied five months after the complaint was filed.¹⁶ Further, Eplboim asked FINRA staff to circle the items they wanted. In response, Enforcement continually referred Eplboim to the original request and later to the documents referenced in the complaint, asking in August 2012 that Eplboim provide a cost estimate for all the documents, regardless of whether he believed he previously provided them to FINRA or Brookstone. Eplboim never did so.

Eplboim's obligation to respond to a FINRA Rule 8210 request is unequivocal, and he cannot impose a condition—e.g., requesting FINRA to circle items or clarify what items Brookstone produced—on his cooperation. *See, e.g., Pearson*, 2006 SEC LEXIS 2781, at *17 (“[A]n associated person may not second guess[] an NASD information request.”) (internal quotations omitted); *Hannan*, 53 S.E.C. at 859 (same); *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993) (“Members cannot be permitted to impose conditions under which they will provide information to FINRA.”).

4. Eplboim's Procedural Argument Is Without Merit

Eplboim argues that the Hearing Panel improperly excluded testimony from Eplboim members who would have testified that they did not approve using Eplboim funds to pay for copies of the documents or to grant FINRA staff access to their accounts to respond to the FINRA Rule 8210 requests. Eplboim's argument fails for several reasons.

¹⁴ On appeal, Eplboim argues that he was under the impression that FINRA would pay for the requested documents, but FINRA revoked its offer. To the extent that FINRA revoked a previous offer, we do not find it relevant to liability in this matter because FINRA staff specifically told Eplboim in October 2011 that it would “entertain alternative measures” to get the documents and later corresponded with Eplboim about various alternative measures.

¹⁵ Eplboim's argument ignores the fact that FINRA was requesting direct access to his account as well. We also question why the Eplboim members would agree to allow their accounts statements to be provided to Brookstone under Eplboim's heightened supervision plan but would not allow FINRA to directly access their account statements from the bank, but we do not need to resolve the issue to find Eplboim liable in this instance.

¹⁶ Many of Eplboim's arguments to excuse his failure to produce the documents, and indeed all of the exhibits he introduced at the hearing below, concern Eplboim's actions and communications with FINRA after the complaint was filed in March 2012. Notwithstanding any post-complaint actions or communications, Eplboim, to this day, has not produced a single document to FINRA in response to the requests for information.

Pursuant to FINRA Rule 9280, the Hearing Officer has the authority to exclude from evidence witnesses or exhibits that a respondent, without substantial justification, failed to disclose pursuant to the scheduling order and FINRA Rules 9242 and 9261. Here, Eplboim has not demonstrated substantial justification for his failure to comply with the Hearing Officer's scheduling order. At the final prehearing conference, Eplboim admitted that he received the scheduling order and failed to file a witness list or exhibit list, but nonetheless requested to have the Eplboim members testify. When asked to explain why he failed to meet the deadline, Eplboim said he was not an attorney and was overwhelmed by the Eplboim bankruptcies and managing the Eplboim entities. Such circumstances do not excuse Eplboim's failure to abide by the deadline. The Hearing Officer properly ruled that Eplboim's failure to submit pre-hearing submissions by the deadline precluded the introduction of exhibits and calling of witnesses, other than those in rebuttal, absent an agreement with Enforcement.¹⁷ Allowing otherwise would have unfairly prejudiced Enforcement and would encourage respondents in other matters not to abide by pre-hearing deadlines.¹⁸ *See Dep't of Enforcement v. Mullins*, Complaint No. 20070094345, 2011 FINRA Discip. LEXIS 61, at *47-49 (FINRA NAC Feb. 24, 2011) (finding that respondents, who sought to introduce a letter not identified on their exhibit list, had not demonstrated substantial justification for their failure to comply with the scheduling order and Enforcement would be unfairly prejudiced by the introduction of the letter), *rev'd on other grounds*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *61-62 (Feb. 10, 2012).

Even if the Eplboim members would have testified, their testimony was not material and would have had no bearing on Eplboim's liability and sanctions. Arguments regarding Eplboim's protests regarding the cost of the production of the documents or access to its bank accounts are not material to the FINRA requests for information directed at Eplboim. *See Goldstein*, 2013 SEC LEXIS 552, at *13-14. In sum, Eplboim did not demonstrate that the proposed testimony of the Eplboim members was relevant to his failure to provide information in response to the FINRA Rule 8210 requests for information.¹⁹ *See Mullins*, 2011 FINRA Discip. LEXIS at *50-52 (finding that an excluded letter not identified on respondents' exhibit list was not material to respondents' liability and sanctions).

For all of the foregoing reasons, we find that Eplboim failed to produce documents in response to FINRA requests for information, in violation of FINRA Rules 8210 and 2010.

¹⁷ On appeal, Eplboim argues that Enforcement misled the Hearing Panel by not allowing Eplboim members to testify. This argument is without merit. Eplboim members were not able to testify because Eplboim failed to abide by the deadline to file a witness list.

¹⁸ On appeal, Eplboim makes reference to emails he was not allowed to present at the hearing. In fact, the emails that Eplboim sought to introduce were accepted into the record. Enforcement consented to the introduction of three of Eplboim's proposed exhibits, and the Hearing Panel admitted an additional exhibit.

¹⁹ To the extent that Eplboim is arguing that the Eplboim members would have testified about the anonymous allegation posted on the "Rip-off Report" website, such testimony also is irrelevant to the conduct at issue in this matter—Eplboim's failure to comply fully with the FINRA requests for information.

III. Sanctions

The Hearing Panel barred Eplboim from associating with any member in any capacity. For the reasons discussed below, we affirm this sanction.

When an associated person does not respond in any manner to a request made pursuant to FINRA Rule 8210, the FINRA Sanction Guidelines (“Guidelines”) provide that a bar should be standard.²⁰ When an associated person provides a partial but incomplete response to a FINRA request for information, the Guidelines provide that “a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.”²¹ Because Eplboim responded in part to the FINRA requests for information, but never produced any of the requested documents, we apply the Guidelines for a partial, but incomplete, response. We find that Eplboim’s partial response did not substantially comply with all aspects of the FINRA Rule 8210 requests.

For providing a partial but incomplete response to a FINRA Rule 8210 request, the Guidelines instruct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the importance of the information requested that was not provided from FINRA’s perspective and whether the information that was provided was relevant and responsive to the request; the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and whether the respondent thoroughly explained valid reasons for the deficiencies in the response.²²

We first consider the importance of the information requested that Eplboim did not provide and the relevance and responsiveness of the information he did provide.²³ In September 2011, FINRA staff had questions concerning Eplboim’s financial dealings with Epancco, including whether Eplboim misappropriated any investor funds or comingled Epancco’s funds with his own. Accordingly, FINRA staff sought from Eplboim 17 categories of documents to investigate the flow of money and determine whether Eplboim engaged in fraudulent conduct.²⁴

²⁰ FINRA Sanction Guidelines 33 (2013), <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf> [hereinafter *Guidelines*].

²¹ *Id.* The Guidelines for providing a partial but incomplete response also recommend a fine of \$10,000 to \$50,000. *Id.*

²² *Id.*

²³ *See id.*

²⁴ FINRA staff also sought copies of all of Eplboim’s personal emails for the relevant time period because an earlier production revealed that Eplboim had used his personal email account to communicate regarding securities activities. Eplboim asserts he only sent one email to a local newspaper concerning his weekly bond advertisement parameters, and he never used his personal email to communicate with clients. The FINRA examiner testified that the other

After the second request, Eplboim sent a partial response, which, in the words of the FINRA examiner, was “substantially incomplete.” The partial response did address five of the 17 categories of requested documents, for which Eplboim provided that no documents existed, and there is no dispute regarding the accuracy of this statement. FINRA staff was able to obtain 30 percent of the requested bank and securities statements directly from Brookstone, but Eplboim never produced any documents directly to FINRA. When an investigator seeks to verify the proper use of funds by an associated person, any missing documents can frustrate the investigation. As the FINRA examiner testified, he was not able follow the flow of money and “was unable to determine whether there was misappropriation or misuse of funds . . . because [he] didn’t have the documents to review for sources of funds.” This was not a minor informative inquiry into Eplboim’s outside business activities. Rather, FINRA staff sought documentation to determine whether Eplboim committed serious infractions of FINRA rules, and they were unable to do so because they did not have the requested documents.

Adjudicators also are instructed to consider the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.²⁵ Despite the seriousness of the potential misconduct under investigation, Eplboim frustrated FINRA’s efforts to obtain the documents. *See PAZ Sec.*, 2008 SEC LEXIS 820, at *13 (stating that failure to respond to information requests frustrates FINRA’s ability to detect misconduct and threatens investors and markets). FINRA sent three requests for information over two months, yet Eplboim only partially responded and never personally provided any documents directly to FINRA. In response to the third request, Eplboim stated that he had called the bank regarding the requested records and assured FINRA staff that he would provide the documents from the bank along with the other items likely in storage or with Eplboim’s accountant or attorneys at the end of November 2011. Eplboim never did so.²⁶ Eplboim’s false assurances wasted FINRA’s time and resources, as staff continued to try to obtain the documents, even after filing the complaint.²⁷

document requests were the “most important” to determine whether Eplboim misappropriated any funds, so we focus more heavily on those requests, and Eplboim’s failure to comply with them, for sanctions purposes.

²⁵ *Id.*

²⁶ *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 12) (considering whether respondent attempted to delay FINRA’s investigation).

²⁷ Indeed, Eplboim did not contact Brookstone about providing responsive documents to FINRA until after the complaint was filed. *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 9) (considering whether respondent engaged in misconduct over an extended period of time); *id.* at 33 (Requests Made Pursuant to FINRA Rule 8210) (considering the number of requests and the degree of regulatory pressure required to obtain a response).

We next consider the validity of each of Eplboim's reasons for his failure to respond to the requests for information.²⁸ First, we do not find Eplboim's assertions credible that his "hands were tied" and that he did not have the ability to obtain any of the requested documents because the Ebandco members would not pay the cost of supplying the documents or authorize FINRA to obtain the documents directly from the bank. Eplboim, not Ebandco, is obligated under FINRA rules to respond to FINRA requests for information and bear the costs associated with responding. Further, certain requested documents—such as Ebandco's audited financial statements, an accounting of Eplboim's compensation, and lists of the investors in and owners of Ebandco—could have been produced without incurring a cost from a banking institution and without authorizing FINRA access to Ebandco's bank accounts.

Indeed, we find that Eplboim was able to produce the requested documents. Eplboim's bank statements and personal emails were his personal records and should have been readily available to Eplboim. Other documents—including Ebandco's audited financial statements, lists of the investors in and owners of Ebandco, an accounting of Eplboim's compensation, bank and securities account statements, and supporting documentation for large deposits and payments for the immediate preceding time period—should have been readily available to Eplboim, who was the manager of Ebandco. Finally, Eplboim admitted some of the documents were available in 2011 when he told FINRA staff that he would provide other items likely in storage or with Ebandco's accountant or attorneys.

Eplboim also argues that FINRA staff used "abusive tactics with its requests for the bank statements . . . while all along they had all copies for the time period requested in their investigation." The record does not provide what specific documents Eplboim was obligated to produce to Brookstone in accordance with his heightened supervision plan.²⁹ We do know, however, that it was not possible for Brookstone to supply all of the documents responsive to the FINRA Rule 8210 requests at issue because: (i) the time period of the requests did not correspond directly with Eplboim's heightened supervision plan; (ii) rather than aver that Brookstone previously supplied to FINRA the responsive documents, Eplboim's partial response provided that he previously supplied certain requested documents to FINRA in connection with the 2009 examination, which would be unresponsive to the 2011 requests; and (iii) the requests sought Eplboim's personal emails, which Brookstone did not have. Further, the record makes clear that Eplboim did not reach out to Brookstone about supplying responsive documents or offer any sort of cost estimate to FINRA until after the complaint was filed.³⁰ Eplboim has an

²⁸ *Id.* at 33.

²⁹ The record provides that Brookstone supplied to FINRA 30 percent of the requested account statements and a list of the investors of Ebandco, including whether they were customers of Brookstone, their percentage ownership, the value of their investment at an undetermined time, all presumably provided to Brookstone by Eplboim in accordance with his heightened supervision plan.

³⁰ FINRA staff did tell Eplboim about his right to inspect their investigative file, which would have shown Eplboim which statements were missing, but Eplboim did not take any action.

unequivocal obligation to produce the requested documents himself, and he cannot impose conditions on his cooperation. *See Pearson*, 2006 SEC LEXIS 2781, at *16; *Hannan*, 53 S.E.C. at 859; *Rouse*, 51 S.E.C. at 584.

We find no mitigation in Eplboim's assertion that the NAC should not impose any sanctions because he has no disciplinary history over the course of his 20-year career and none of the Epancco members filed a complaint against him. As we have emphasized many times, the absence of disciplinary history and customer complaints is not mitigating. *See, e.g., Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006) (determining that the lack of disciplinary history is not mitigating and the representative "was required to comply with the NASD's high standards of conduct at all times"); *Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *23 (Dec. 7, 2010) (holding that FINRA's "power to enforce its rules is independent of a customer's decision not to complain") (citation omitted). In fact, Eplboim was suspended in March 2012 from associating with any FINRA member firm in any capacity for 10 business days after agreeing to an offer of settlement, whereby Eplboim consented, without admitting or denying the allegations in the complaint, to findings that he effected 44 trades charging excessive mark-ups and mark-downs. We find this recent disciplinary history is aggravating because it shows Eplboim's disregard for FINRA rules and regulatory requirements.³¹

We likewise are not persuaded that Eplboim's financial difficulties and personal circumstances prevented him from producing the requested documents. Well-established precedent provides that personal circumstances, including bankruptcy, financial distress, and litigation, are not mitigating with respect to FINRA Rule 8210 compliance. *See, e.g., Malach*, 51 S.E.C. at 620 (finding that respondent's personal problems did not excuse his failure to provide requested information over a two-year period); *Variable Inv. Corp.*, 46 S.E.C. 1352, 1354 (1978) (noting that personal circumstances, including the pressure of litigation, do not relieve respondent's obligation to comply fully with NASD requests for information); *Dep't of Enforcement v. Chiulli*, Complaint No. C07970006, 1998 NASD Discip. LEXIS 43, at *33-34 (NASD NAC Oct. 15, 1998) (finding that respondent's personal bankruptcy was irrelevant and not mitigating to respondent's failure to permit NASD to inspect documents pursuant to NASD Rule 8210), *aff'd*, 54 S.E.C. at 526 (2000). Further, FINRA staff offered Eplboim a means to alleviate his cost concerns, but he nonetheless failed to provide a complete estimate of the costs to comply with the requests for information or to grant FINRA access to the bank accounts, thus undercutting his argument.

There is nothing in the record to contradict Eplboim's assertion that he fully complied with FINRA's requests related to Epancco in connection to its 2009 examination of Brookstone. Eplboim's cooperation with the 2009 examination, however, would suggest that Eplboim apparently understood, at least at one time, his obligations under FINRA rules. But as to the 2011 examination, there is no dispute that Eplboim personally never produced any of the requested documents at issue to FINRA. When Eplboim did respond to FINRA in connection with the requests at issue, he usually responded late and his responses were insufficient with

³¹ *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 1) (considering respondent's relevant disciplinary history).

respect to the requests and FINRA Rule 8210. Further, it was not until after FINRA filed the complaint that Eplboim appeared to make an attempt to comply with the requests for information, when he reached out to Brookstone and corresponded with FINRA regarding cost estimates. Despite FINRA and Brookstone repeatedly telling Eplboim that prior productions to FINRA and Brookstone did not obviate his obligation to produce the documents, Eplboim never produced any of the requested documents.³² Ignorance of FINRA rules is not a basis for mitigation. *See Gilbert M. Hair*, 51 S.E.C. 374, 378 n.12 (1993).

Eplboim's continued denial of responsibility to this date and attempts to blame the Eplboim members and FINRA staff is troubling and serves to aggravate his misconduct.³³ *See, e.g., Geoffrey Ortiz*, Exchange Act Release 58416, 2008 SEC LEXIS 2401, at *28 (Aug. 22, 2008) (finding that the fact that respondent blamed others for what occurred supported a serious sanction); *Michael G. Keselica*, 52 S.E.C. 33, 37 (1994) (determining that "attempts to blame others for his misconduct . . . demonstrate that [the respondent] fails to understand the seriousness of [his] violations"), *aff'd*, No. 95-1012, 1995 U.S. App. LEXIS 40288 (D.C. Cir. 1995). Ultimately, we find that Eplboim does not understand or accept the breadth of requisite responsibility of an associated person, warranting the sanction of a bar in this instance.

For all these reasons, we bar Eplboim in all capacities for his violations of FINRA Rules 8210 and 2010. *See, e.g., Dep't of Enforcement v. Gallagher*, Complaint No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *51 (FINRA NAC Dec. 12, 2012) (imposing a bar on respondent who appeared for scheduled testimony pursuant to Rule 8210 but refused to answer questions concerning matters other than his outside business activities); *Dep't of Enforcement v. Harvest Capital Invs.*, Complaint No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at*55-56 (FINRA NAC Oct. 6, 2008) (barring an associated person and expelling member where respondents provided only a small number of requested documents in response to the FINRA's first four written requests for information and respondents completely ignored the fifth written request for information). Barring Eplboim is appropriately remedial and will serve as a deterrent to others who may seek to avoid complying with FINRA requests for information and documents.

³² *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 15) (considering whether respondent engaged in misconduct notwithstanding warnings from FINRA or a supervisor that the conduct violated FINRA rules).

³³ *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 2) (considering whether respondent accepted responsibility for and acknowledged the misconduct).

IV. Conclusion

Eplboim failed to produce documents in response to FINRA requests for information, in violation of FINRA Rules 8210 and 2010. For his misconduct, we bar Eplboim from associating in any capacity with any FINRA member, effective upon service of this decision. We also order that he pay appeal costs of \$1,913.01.³⁴

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith,
Senior Vice President and Corporate Secretary

³⁴ We have considered and reject without discussion all other arguments advanced by the parties.