

**FINANCIAL INDUSTRY REGULATORY AUTHORITY<sup>1</sup>**  
**OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

WARREN K. HANSEN  
(CRD No. 3014245),

Respondent.

Disciplinary Proceeding  
No. 2005001085001

Hearing Officer – Sara Nelson Bloom

**Hearing Panel Decision**

January 10, 2008

**Respondent is barred for failing to respond to written requests  
for information and documents, in violation of Rules 8210 and  
2110.**

**Appearances**

David B. Klafter, Esq., and Brian Donnelly, Esq., Boca Raton, FL, appeared for the Department of Enforcement.

Respondent appeared on his own behalf.

**I. Procedural History**

On March 19, 2007, the Department of Enforcement (“Enforcement”) filed a one-count Complaint alleging that Warren K. Hansen (“Respondent”) failed to respond to written requests for information and documents, in violation of Rules 8210 and 2110. Respondent filed an Answer denying the charges and requesting a hearing which was held on September 25, 2007,

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<sup>1</sup> As of July 30, 2007, NASD consolidated with the member firm regulation functions of the NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”).

before a hearing panel composed of a Hearing Officer and two members of the District 7 Committee.<sup>2</sup>

## **II. Respondent**

Respondent became registered with FINRA as a General Securities Representative in March 1998, and has been associated with various member firms since then. CX-1. From June 2003 through October 2004, he was registered with Sunstate Equity Trading (“Sunstate”). He was registered with Electronic Access Direct, Inc. (“EAD”) from October 2004 until January 2005, when he was terminated. From March 24, 2005 through March 30, 2005, he was associated with Securities & Investment Planning Co. (“SIP”).<sup>3</sup> Respondent is not currently associated with a member firm. Id.

## **III. Facts**

In May of 2005, FINRA Staff (“Staff”) conducted an on-the-record (“OTR”) interview of Respondent. Staff was investigating possible market manipulation of certain securities for the period May 2004 through April 2005. In the course of its investigation, Staff learned that Respondent had exchanged numerous instant message communications with a trader under investigation, and Respondent also traded the three securities under investigation. Tr. 39-40, 72. At about the same time, Respondent was terminated for cause because, according to his firm, he “directed trading that was outside of his authority...filed various documents with other entities without the knowledge or consent of the firm... [and] was uncooperative with an internal review of these matters.” CX-1 p. 6; Tr. 72-73. Moreover, Staff had information indicating that

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<sup>2</sup> References to the testimony of the hearing are designated as “Tr\_,” with the appropriate page number. References to the exhibits provided by Enforcement are designated as “CX-\_\_\_.” CX-1 - 10 were admitted into the record. Respondent offered no exhibits.

<sup>3</sup> Respondent applied for registration with SIP, but SIP filed a form U5 reflecting that Respondent resigned before his registration became effective. CX-1; Tr. 75-76.

Respondent received \$150,000 by wire from an offshore corporation in the Caribbean. Staff determined to investigate Respondent's activities as part of its market manipulation investigation. Tr. 39-40, 73.

Accordingly, on July 21, 2005, following the OTR, Staff sent a request, pursuant to Rule 8210, for Respondent's electronic mail and phone records for the period March 1, 2004 to April 30, 2005, as well as a list of all phones Respondent used. Staff also requested Respondent's tax return, Form 1099s and Form W-2s for 2004, or a statement as to why these documents were not available. In addition, Staff requested a listing of all bank and brokerage accounts maintained by Respondent in 2004, and all related account statements. Staff also requested that Respondent provide the same information relating to three sources related to Respondent: (1) his wife, based upon Respondent's OTR testimony that Respondent's wife served as his assistant; (2) Trader Support Services ("TSS"), based upon independent information indicating that Respondent served as an officer and registered agent for TSS; and (3) Hyperion Trading ("Hyperion"), based upon information that Respondent served as an officer of Hyperion, and information indicated that Respondent and his wife sent emails from a Hyperiontrading.com website. CX-2; Tr. 51-54. Finally, Staff asked that Respondent explain the basis for his claim that he was due commissions from SIP, despite the fact that he was not able to register with that firm. CX-2 p. 4; Tr. 55. Staff requested a response by August 5, 2005. Id. Staff sent the letter to Respondent's residential address as then reported on the Central Registration Depository (his "CRD address"), by first-class and certified mail.

On August 2, 2005, Respondent requested an extension of time until August 16, 2005, to respond, which Enforcement granted. CX-3; Tr. 48. On August 18, 2005, Respondent's

Counsel sent a letter purporting to respond to the Staff request for information. CX-4.

Respondent provided responses to items one and ten.

However, Respondent did not respond to requests two through nine, which called for electronic mail and phone records, tax returns, Form W-2s, Form 1099s, bank and brokerage account statements, and narratives relating to these requests, on the basis that the requests were “irrelevant.”<sup>4</sup> CX-2; Tr. 61-62.

On August 22, 2005, Staff spoke with Respondent’s counsel by telephone. CX-5. During the call, Respondent’s counsel reiterated that the information and documents requested were withheld because they were irrelevant, and added that they were also “personal and confidential.” Tr. 50, 57-58. Respondent’s counsel was firm in his position, did not indicate a willingness to cooperate with the Staff’s request, and became belligerent. Tr. 62. Therefore, Staff concluded that further calls would not be productive. Id.

On August 24, 2005, Staff wrote Respondent a letter reiterating its request for a response to items two through nine, and asserting that a response of “irrelevant” was not acceptable. CX-5. Staff also sought a complete response to item ten, relating to commissions claimed by Respondent. The letter reiterated that the request for information was pursuant to Rule 8210, and a failure to comply “could result in a disciplinary action, including a suspension, fine, or bar from the securities industry.” The letter was sent to Respondent, with a copy to his counsel, by first-class and certified mail. Id.

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<sup>4</sup> Respondent provided a non-responsive answer to request number seven, that he “never received 1099’s from Sunstate or EAD for 2004.” CX-4. However, this was not fully responsive to Staff’s request, which stated: “If any such tax returns, Form 1099’s, or W-2’s received or filed on either yours, *your wife’s*, *Trader Support Services*, or *Hyperion Trading’s* behalf, please provide a detailed, written statement explaining why such documents have not been received or filed, and an estimated time frame during which you expect that such documents will be received and filed. (Emphasis added). CX-2.

On September 2, 2005, Respondent's counsel wrote Staff, stating that: "we disagree that the responses were incomplete and non-responsive. We are interested in assisting [FINRA] in its inquiry, but not at the expense of seeking personal unrelated information from Mr. Hansen." The letter concluded that Respondent's counsel was willing to discuss the matter, and suggested that Staff contact him. CX-6. As noted above, Staff declined to telephone Respondent's counsel, as it had determined that it would not be productive. Tr. 62.

On September 6, 2005, Staff sent a "third and final" letter reiterating its August 24, 2005, request, and requesting a response by no later than September 14, 2005. The letter was sent by first-class and certified mail to Respondent, with a copy to his counsel. CX-7.

On September 12, 2005, Respondent's counsel sent a letter to Staff asserting that Respondent had furnished "substantial and material" information (possibly referencing Respondent's narrative response to items one and ten), but asserting that other information would not be made available because it was "personal and confidential." CX-8.

On September 21, 2005, Staff sent Respondent's counsel a "fourth and final" letter with a copy to Respondent. The letter indicated that if a response was not received by September 26, 2005, Staff intended to proceed with formal disciplinary action against Respondent. CX-9.

Respondent's counsel responded by letter on September 23, 2005, and offered to discuss the matter further, but did not provide any information or documents in response to the outstanding requests for information. To date, Respondent has not provided the requested information and documents. As a result, Enforcement initiated this action.

#### **IV. Discussion**

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key

element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power. See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at \*12 (N.A.C. May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exchange Act Release No. 42359, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA effectively to conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information). When an individual fails to provide requested documents and information, FINRA's ability to perform its regulatory responsibilities is subverted. Joseph P. Hannan, Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at \*9 (Sept. 14, 1998).

Here, Respondent argues that the information requested is "irrelevant," "personal and confidential," and documents were in the possession of, or could have been obtained from, others.<sup>5</sup> It is well settled that respondents cannot dictate the terms and conditions under which information will be furnished, nor can they "second guess" a request or "take it upon themselves to determine whether information requested is material to a FINRA investigation of their conduct." Morton Bruce Erenstein, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596

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<sup>5</sup> FINRA can only seek "a member or associated person's documents." Ochanpaugh, 2006 SEC LEXIS 1926 at \*n.14, (Aug. 25, 2006). Although Respondent testified that he did not have custody or control of certain requested documents, as discussed below, his testimony was not credible. However, even if Respondent's testimony was credible, the argument comes too late. As discussed below, FINRA is not required to bring a disciplinary action to get a response or an explanation as to why a Respondent cannot respond. Finally, because it is clear that Respondent failed to provide at least some of the requested information, the Panel is not required to reach the issue in any event.

(November 8, 2007)(citations omitted); Hannan, 1998 SEC LEXIS 1955 at \*11 (“an NASD member may not second guess or impose conditions on the NASD’s request for information”).

Moreover, a belief that FINRA does not need the information “provides no excuse for a failure to provide it.” Erenstein, 2007 SEC LEXIS 2596 at \*n.12; Dennis A. Pearson, Jr., Exchange Act Release No. 54913, 2006 SEC LEXIS 2871 (Dec. 11, 2006)(citation omitted).

Respondent’s argument that the documents requested are confidential is also without merit in a FINRA proceeding. Bank, phone, and tax records are routinely sought pursuant to Rule 8210 requests, and are not afforded any greater level of protection than other documents and records. See Dep’t of Enforcement v. Dennis Sturm, No. CAF000033, 2002 NASD Discip. LEXIS 2 (N.A.C. Mar. 21, 2002); DBCC v. Chlowitz, No. C02980025, 1999 NASD Discip. LEXIS 31 (N.A.C. Nov. 4, 1999)(barring respondent for failing to produce tax returns, despite claims of invasion of privacy).

In any event, while Rule 8210 does not require that FINRA establish the relevancy of its request, the relevance of the requested information should have been clear. Staff was investigating possible market manipulation involving a trader who appeared to be in frequent communication with Respondent. Moreover, the investigation revealed that Respondent traded the very securities being investigated and received a large transfer of funds from an off-shore account. Therefore, Respondent’s electronic mail, telephone and financial records were relevant to Staff’s investigation.

At the hearing, Respondent belatedly asserted that he did not have any responsive documents.<sup>6</sup> To the extent that there was any factual basis for this argument, it was too late.<sup>7</sup> “[R]ecipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot.” Charles C. Fawcett, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598 at \*n.20 (Nov. 8, 2007). Staff should not have to bring a disciplinary proceeding to obtain responses to its request for information. Dep’t of Enforcement v. Steinhart, No. FPI020002, 2003 NASD Discip. LEXIS 23 at \*13 (N.A.C. August 11, 2003). Accordingly, by failing to respond to requests for documents and information, the Respondent violated Rules 8210 and 2110.<sup>8</sup>

## V. Sanctions

Enforcement argues that a bar is the appropriate sanction in this case; Respondent urges the Panel to impose no sanction. Under FINRA Sanction Guidelines (“Guidelines”), “[i]f the individual did not respond in any manner, a bar should be standard. Where mitigation exists, or

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<sup>6</sup> Respondent also claimed that Staff should have limited the timeframe of the request to before January 12, 2005, because he was not registered with FINRA after that date. Tr. 20. The Panel was not required to reach the issue, because Respondent failed to respond to Rule 8210 requests covering periods when he was registered. Nonetheless, Rule 8210 provides that FINRA Staff may make requests of a person *associated* with a member, which would in this case cover Respondent’s association with SIP from March 24 to March 30, 2005. Moreover, Rule 8210 permits FINRA to compel the production of documents and information with respect to matters under investigation without limitation. In addition, Article 5, Section 4 of the FINRA By-Laws, which sets forth FINRA’s jurisdiction, provides that a person whose association with a member has been terminated shall, for two years thereafter, be subject to the filing of a complaint based upon conduct that *commenced* prior to termination (emphasis added).

<sup>7</sup> In any event, the Panel found Respondent’s testimony on this point to be confused, inconsistent, and not credible. See, e.g., Tr. 131-132, 174. For example, at one point Respondent testified that he had no bank accounts. Tr. 145. He later testified that he had a joint bank account with his wife. Tr. 151. He also testified that he did not produce bank account documents because he was concerned that they would be made public. Tr. 149-151.

<sup>8</sup> A violation of Rule 8210 is also a violation of Rule 2110, contravening “high standards of commercial honor.” Dep’t of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at \*25 (N.A.C. Apr. 19, 2000).



the person did not respond in a timely manner, consider suspending the individual in any or all capacities for up to two years.”<sup>9</sup>

Here, Respondent failed to respond to repeated requests for documents and information.<sup>10</sup> His refusal to respond was knowing and unequivocal. There are no mitigating circumstances that would warrant a lesser sanction. Accordingly, Respondent is barred from association with any FINRA member in any capacity for failing to provide information requested pursuant to Rule 8210.<sup>11</sup>

## **VI. Conclusion**

Respondent is barred from association with any member firm in any capacity for failing to respond to requests for information and documents, in violation of Rules 8210 and 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

### **HEARING PANEL**

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By: Sara Nelson Bloom  
Hearing Officer

Copies to: Warren K. Hansen (via facsimile and FedEx)  
David B. Klafter, Esq. (via electronic mail)  
Brian Donnelly, Esq. (via electronic mail)  
Mark P. Dauer, Esq. (via electronic mail)

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<sup>9</sup> Guidelines, at p. 35 (2007 ed.).

<sup>10</sup> While Respondent partially responded to two of the requests, he failed to respond to the vast majority of them. The Panel views this as a complete failure to respond.

<sup>11</sup> The Hearing Panel has considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.