

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MEYERS ASSOCIATES, LP

(CRD No. 34171),

Respondent.

Disciplinary Proceeding
No. 2009017775601

Hearing Panel Decision

Hearing Officer – SNB

April 25, 2011

For failing to respond to FINRA requests for information, in violation of Rules 8210 and 2010, Respondent is fined \$50,000.

Appearances

Julie K. Glynn, New York, NY, and Jeffrey Pariser, Washington, DC, for the Department of Enforcement.

Robert I. Rabinowitz, West Long Branch, NJ, for Meyers Associates, LP.

DECISION

I. Procedural History

On February 1, 2010, the Department of Enforcement (“Enforcement”) filed a Complaint against Respondent Meyers Associates, LP (“Respondent” or “the Firm”), alleging that it failed to respond to two Rule 8210 requests for information. As discussed below, the Firm failed to respond until it received Enforcement’s motion for default. After counsel entered an appearance on the Firm’s behalf on May 7, 2010, Enforcement filed a motion to hold the default motion in abeyance, which the Hearing Officer granted. On July 30, 2010, the Firm filed an Answer, and on August 3, 2010, an Amended Answer. On November 23 and December 21, 2010, a hearing

was held before a hearing panel composed of the Hearing Officer, a current member of the District 10 Committee, and a current member of the District 11 Committee.¹

II. Origin of Investigation

This proceeding followed the Firm's failure to respond to Staff's Rule 8210 requests for information relating to a customer arbitration claim disclosed in a Form U5. Stip. 3-4; JX-20; Tr. 39-40.

III. Respondent

The Firm has been a FINRA member since June 1994 and is subject to FINRA's jurisdiction. Stip. 1. During the time at issue, the Firm had approximately 60 representatives. Bruce Meyers ("Meyers") served as its President. Victor Puzio ("Puzio") served as its Financial and Operations Principal and Chief Compliance Officer ("CCO") until September 2009, when a new CCO was hired. Tr. 160, 316-19. Charles Lake ("Lake"), an independent contractor, provided compliance consulting services to the Firm until his death at the end of May 2009. Tr. 144-47.

IV. Discussion

The case involves two Rule 8210 requests to the Firm for information relating to a customer complaint. The first was initiated in May 2009 (the "Original Request"), and the second was initiated in July 2009 (the "Supplemental Request"). The Firm responded to most of the Original Request, but did not respond to the Supplemental Request until well after the Staff initiated disciplinary action.

¹ References to the transcript of the hearing are designated as "Tr. __", with the appropriate page number. References to the exhibits provided by Enforcement are designated as "CX-__." References to exhibits provided by Respondent are designated as "RX-__." References to joint exhibits are designated as "JX-__." References to Stipulations are designated as "Stip. __." Exhibits CX-21, CX-23-25, RX-1, and JX-1-22 were admitted into the record without objection. Tr. 377-378.

A. The Original Request

On May 7, 2009, Enforcement sent its Original Request regarding a Form U5 disclosure of a customer arbitration claim alleging that the Firm's registered representative opened a customer account without authorization and churned the account, resulting in losses of \$200,000. Stip. 3-5; JX-1, JX-20; Tr. 39. Staff requested the customer's statement of claim, a detailed statement addressing the allegations, the Firm's response to the customer, correspondence with the customer, memoranda regarding the complaint, the registered representative's personnel file, the Firm's Written Supervisory Procedures, and the customer's new account documentation, account statements, order tickets and confirmations. JX-1. The Firm's response was due no later than May 28, 2009. Stip. 5. Puzio asked Lake to prepare a response. Tr. 145, 163.

On May 28, 2009, Lake timely responded to the Original Request. Stip. 7; CX-24. The response contained much of the requested information but was incomplete in a few respects. Stip. 8; Tr. 87. On June 12, 2009, the Staff sent a letter detailing the missing information. JX-3. Specifically, Staff indicated that signature lines were obscured on new account forms, the Firm did not include a detailed written statement addressing the allegations in the arbitration claim, three account statement pages were illegible, and there was no indication that Lake's response was adopted by a Firm principal. *Id.*; Tr. 50-52. Staff requested that the Firm provide a response addressing these items by no later than June 22, 2009. Stip. 9; JX-3.

By the time Staff sent the June 12, 2009, letter to the Firm, Lake had died. Tr. 146-47. When Puzio returned from vacation on June 15, 2009, he learned of Lake's death and took over Lake's compliance work, including responding to Staff's request. Tr. 148.

On July 1, 2009, Puzio responded on behalf of the Firm. Stip. 11; JX-5. As requested, Puzio adopted Lake's earlier submission on the Firm's behalf. In response to the Staff's request for a narrative addressing the charges, Puzio stated that he would provide the answer to the

arbitration claim once it was prepared. JX-5. Although he claimed to have done so, Puzio failed to include any of the further documents identified in Staff's June 12, 2009, letter. Stip. 11; JX-3; Tr. 53-55. Specifically, he did not include legible new account forms and missing pages from previously provided account statements or a narrative addressing the charges in the customer complaint, and he did not list communications between the registered representative and the customer. Stip. 11; JX-5; Tr. 53, 57.

On July 3, 2009, Puzio's retina detached and his vision was severely impaired. Tr. 152. On July 6, 2009, Staff sent an e-mail to Puzio noting that the new account documentation and account statements were not included. JX-6; Tr. 55. Puzio did not respond to the e-mail. Tr. 56. On July 7, 2009, Puzio had surgery to repair the detached retina. He was out of the office for two weeks. Tr. 152, 168. Thereafter, Puzio was absent from the office intermittently for several months as he recovered and received post-operative treatments on his eye. Tr. 153, 171. Puzio recalled very little about Staff's requests following his surgery. Tr. 156-58, 177-78, 182-83.

B. The Supplemental Request

On July 10, 2009, FINRA sent the Supplemental Request with a July 24, 2009 deadline for a response. JX-7. Staff requested details and records reflecting communications between the customer and the broker, the broker's notes regarding the customer account, records of cash withdrawals or transfers from the customer account, and the names of the broker's supervisor(s). *Id.*; Tr. 58. The request was addressed to Puzio, who was out of the office due to his eye surgery when the Firm received the request. Tr. 152, 168.

Several days later, on July 16, 2009, Staff sent a letter to the Firm's CEO, Meyers, enclosing the Original and Supplemental Requests that were previously sent to Puzio, and stating that it was important to respond to them. Stip. 12, 19; JX-8; Tr. 60. The Firm received the request no later than July 21, 2009, but it did not respond. Stip. 13.

On August 7, 2009, Staff sent another letter to Meyers reiterating that the Firm had not yet provided five outstanding items with respect to its Original and Supplemental Requests, and noting that the Firm was required to respond by August 17, 2009. Stip. 14; JX-9. The letter indicated that if the responses were not received, the Firm, Puzio, and Meyers may be subject to possible disciplinary action. *Id.* Again, the Firm received the letter, but did not respond. Stip. 15; Tr. 62.

C. The Competing Regulatory Requests

At the same time that Staff's Original and Supplemental requests were pending, the Firm was also subject to a number of other regulatory requests. In June 2009, FINRA Staff began field work in the Firm's offices as part of a cycle examination, during the course of which Staff made daily requests for information. Tr. 101, 149, 172-73. In addition, the Firm was subject to requests from the SEC and FINRA in connection with several investigations. Tr. 149, 321-23, 344-48.

D. The Firm Retains Outside Counsel to Respond to the Rule 8210 Requests

Given the competing regulatory demands being placed on the Firm and the unexpected loss of Firm personnel to handle them, Meyers determined that the Firm needed additional resources. Tr. 154, 236, 326, 348. He therefore began a search for a full-time CCO.² Tr. 323. In the interim, he retained David Schrader ("Schrader") as outside counsel to assist in responding to Staff's Original and Supplemental Requests. Tr. 326, 348.

On August 18, 2009, Schrader requested and received an extension until August 24, 2009, for the Firm to respond to the Staff's Original and Supplemental Requests. Stip. 22; JX-10; Tr. 64-65, 236. On the same day, Staff spoke with Schrader and received permission to copy

² The Firm ultimately hired a new CCO who started work at the Firm on September 16, 2009. Stip. 45.

the Firm on communications regarding the Staff requests, in order to make sure that the Firm was aware of the status of the requests. JX-10; Tr. 66.

After failing to receive the Firm's response to the Original and Supplemental Requests on August 24, 2009, Staff sent Schrader an e-mail on August 31, 2009, asking about the status of the Firm's response. Stip. 23; JX-13; Tr. 67-68. Puzio was copied on this inquiry. JX-13.

E. Outside Counsel's Broken Promises Regarding the Firm's Response

Over the course of the next five weeks, Schrader repeatedly represented that the Firm's response would be submitted shortly. First, on August 31, 2009, Schrader informed Staff that the response would be submitted by September 2, 2009. JX-13, JX-14; Tr. 69, 239. Then, on September 8, 2009, in response to Staff's e-mail inquiry to Schrader and Puzio, Schrader indicated that the response would be sent that day via overnight delivery. Stip. 24; JX-15, JX-16; Tr. 71.

On September 11, 2009, Staff informed Schrader by e-mail, with a copy to Puzio, that it had not received the promised response. JX-17; Tr. 72. On September 17, 2009, when no response to this e-mail had arrived, Staff telephoned Schrader who misrepresented to Staff that the Firm's response had been mailed the prior week. Tr. 72-74. Staff searched the office to locate the response, and later that afternoon informed Schrader and Puzio by e-mail that Staff did not receive it. JX-18; Tr. 73-74. Minutes later, Schrader sent Staff an e-mail stating: "[s]orry for any mix up...would you prefer me to have it messengered or federal expressed? I will set up the package tomorrow morning." Stip. 25; JX-18. Staff immediately responded that it did not matter how the response was sent, as long as Staff received it. *Id.*; Tr. 75. Schrader promised to send the response via Federal Express, along with a tracking number. *Id.* However, he did not do so, and Staff did not receive the Firm's response. *Id.*

On September 23, 2009, Staff sent Schrader and Puzio one last e-mail communication about the Firm's failure to respond to Staff's requests. JX-19; Tr. 75, 109. Schrader responded with an apology for not sending the response. He represented that he was sending the response for copying, it would be hand delivered to FINRA the next day, and Schrader would call to confirm when the delivery was on its way. *Id.* However, consistent with Schrader's earlier unfulfilled promises, Schrader never called and the response never arrived. Tr. 76. Ultimately, the Firm did not respond and the Staff determined it necessary to initiate disciplinary action. Stip. 27, 28.

F. Staff Initiates Disciplinary Action

On October 19, 2009, FINRA sent a Wells Notice to Schrader via regular mail and e-mail, indicating that Staff was recommending an Enforcement action for the Firm's failure to respond to Staff's Rule 8210 requests for information. RX-1. The Wells Notice provided a November 2, 2009, deadline for the Firm to respond. *Id.*; Tr. 257. Schrader requested and received a one-week extension of time to respond to the Wells Notice. Tr. 264. However, the Firm did not respond.

On January 14, 2010, there was a 30-alarm fire in the Firm's building caused by faulty heating repairs. Stip. 46; Tr. 159, 329-31. As a result, there was extensive smoke and water damage to the Firm's offices. Tr. 159, 331. The following day, the Firm was flooded when water pipes in the office froze and broke. Tr. 331. The Firm was unable to operate for approximately two weeks. Thereafter, the Firm's operations continued to be disrupted; computers and phones operated only intermittently over the next two months and some of the Firm's employees contracted respiratory illnesses. Tr. 331-32.

On January 29, 2010, Enforcement served a Complaint on the Firm, with a copy to Schrader, charging the Firm with failing to respond to the Staff's Original and Supplemental

Rule 8210 requests. Stip. 28; Tr. 197, 209-10, 257-58. The Firm received the Complaint no later than February 1, 2010. Stip. 30. The Firm did not respond. Stip. 32.

On March 4, 2010, Enforcement served a Complaint and Second Notice of Complaint on the Firm, with a copy to Schrader. Stip. 33. The Firm received the Complaint and Second Notice of Complaint no later than March 5, 2010. Stip. 35. Again, the Firm did not respond. Stip. 37.

On March 24, 2010, the Hearing Officer sent an order to Enforcement, the Firm, and Schrader, setting a deadline for Enforcement to file a motion for default. On May 4, 2010, Enforcement filed a Motion for Default Decision, which was served on the Firm. Stip. 38, Stip. 41. Three days later, new counsel entered an appearance on the Firm's behalf, and the efforts to respond to the Staff's requests resumed.³ Stip. 42. The Firm fully responded to Staff's Original and Supplemental Requests in August 2010. Stip. 44.

V. Violation – Failure to Respond

Rule 8210 authorizes FINRA to require any member subject to its jurisdiction to provide information and testimony related to any matter under investigation. Rule 8210 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 Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to

³ On May 27, 2010, Enforcement filed a motion to hold the default motion in abeyance, which the Hearing Officer granted.

effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

Here, there is no dispute that the Firm failed to fully respond to Staff's Original Request and failed to provide any response at all to the Supplemental Request until after Staff was required to initiate disciplinary action. While the Firm ultimately responded to the requests, it did so only after numerous reminders, a Wells Notice,⁴ two notices of Complaint, an Order setting a deadline for a motion for default, and a motion for default. "[R]ecipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot." *Charles C. Fawcett*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *18 (Nov. 8, 2007). The SEC has repeatedly emphasized that Staff should not have to bring a disciplinary proceeding to obtain responses to its requests for information. *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *12 (Sept. 10, 2010), *appeal filed*, No. 10-4566 (2d Cir. Nov. 15, 2010). A violation of Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of Rule 2010. *Id.* at *13 n.12.

The Firm argues that it relied upon Schrader to provide the responses. At the Hearing, there was conflicting testimony and finger pointing between Firm representatives and Schrader as to who was responsible for responding to Staff's requests. However, the Panel need not resolve this issue; a firm cannot escape regulatory responsibilities by outsourcing them. As the SEC stated in *Dennis A. Pearson, Jr.*:

We have held that the person to whom an information request is directed "ha[s] a duty to respond himself or to supervise others diligently with adequate follow-up to ensure a prompt response to [FINRA]. We have further held that a person to whom such a request is made "is responsible for responding directly to [FINRA's] requests for information and cannot shift responsibility to [another] for his own failure to provide requested information in a timely fashion." Thus, a member or an associated person cannot satisfy his obligation to respond to an information request by simply referring the matter to a

⁴ The Wells Notice was sent only to Schrader. RX-1.

lawyer, particularly where, as here, the member or person fails to act to ensure that the lawyer has provided the requested information.

Exchange Act Rel. No. 54913, 2006 SEC LEXIS 2871, at *14 (Dec. 11, 2006) (citations omitted).

In this case, the Firm failed to take steps to ensure that Staff received a timely and complete response. In fact, Puzio was copied on numerous e-mails from the Staff indicating that it had not received the Firm's response. These e-mails also reflected Schrader's repeated broken promises that a response was forthcoming. Meyers also received several letters from the Staff indicating that the requested documents had not been produced. Yet neither Puzio nor Meyers took any steps to rectify the situation or confirm that Staff's requests were satisfied until after disciplinary action was initiated.

Based upon the foregoing, the Panel found that the Firm violated FINRA Rules 8210 and 2010.

VI. Sanctions

FINRA recently revised its Sanction Guidelines ("Guidelines") for Rule 8210 violations. For failing to respond to requests for information in any manner, the Guidelines recommend a fine of \$25,000 to \$50,000. For providing a partial but incomplete response, the Guidelines recommend a fine of \$10,000 to \$50,000. If mitigation exists, the Guidelines recommend consideration of a suspension of up to two years. Guidelines at 33 (March 2011). Enforcement requests a \$200,000 fine and no suspension.

In determining an appropriate sanction, the Panel considered a number of the Principal Considerations in the Guidelines. Specifically, the information requested by the Staff was important. Tr. 57-58. Staff was investigating allegations of forgery, unauthorized accounts, unauthorized trading, churning, and failure to supervise, among other things. Further, Staff repeatedly reminded the Firm about its outstanding requests over a four-month period before it

initiated disciplinary action. Rather than communicating with Staff or asking for extensions of time to respond, the Firm's responses through Schrader were evasive and misleading, and the promised response never came. Even after receiving the Second Notice of Complaint, the Firm failed to ensure that the matter was appropriately addressed. In fact, no action was taken until the Firm received a Motion for Default. Ultimately, the Firm did not fully respond until August 2010. The degree of regulatory pressure required to obtain a response was extreme.

The Panel also considered the Firm's prior disciplinary history, which included failing to retain e-mails, conducting a municipal securities business without a registered municipal security principal, failing to produce discovery in an arbitration proceeding, failing to pay arbitration fees and conducting a securities business while suspended for failing to pay arbitration fees, among other things. CX-25 pp. 17-29; Tr. 355-58.

The Panel also considered uncontested evidence of the Firm's deteriorating financial condition.⁵ Specifically, the Firm presented FOCUS reports indicating that, while the Firm showed a \$175,000 net profit in 2009, it experienced net losses of \$167,000 and \$237,000 for the months ending June 2010 and August 2010, respectively, and its net capital dropped from \$857,000 to \$593,000 during the same period. JX-21, JX 22; Tr. 336-39. These FOCUS reports also indicated that the Firm's net capital requirement for the period was \$100,000. JX-21; Tr. 376. Meyers, who did not take a salary in 2009, estimated that the Firm's net capital at the time of the hearing was \$400,000. Tr. 336-337. He also estimated that the Firm's clearing firms required it to maintain approximately \$225,000 to \$235,000 in minimum net capital balances.

Id.

⁵ Guidelines, n.1; FINRA Notice to Members 06-55 (Sept. 2006); *Cf. Dep't of Enforcement v. FCS Securities*, No. 2007010306901, 2010 FINRA Discip. LEXIS 9, at *27 (N.A.C. July 30, 2010) ("We have imposed a fine below the lowest recommended fine for the late filing of FOCUS reports because of FCS's small size and limited revenue.").

While the Panel is cognizant that the Firm was unexpectedly short staffed and dealing with competing demands for resources in connection with several SEC and FINRA investigations, the Firm did not request an extension of time or otherwise discuss these issues with Staff. Instead, time after time, it simply failed to respond as promised. After careful consideration, the Panel concluded that the Firm's violation was serious and found that a \$50,000 fine, at the maximum of the range in the Guidelines, was appropriately remedial for the Firm's violation of Rules 8210 and 2010.

VII. Conclusion

For failing to respond to FINRA requests for information, in violation of Rules 8210 and 2010, Respondent is fined \$50,000. Respondent is also ordered to pay costs in the amount of \$4,045.95 which includes a \$750 administrative fee and the cost of the hearing transcript. The fine and costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.⁶

HEARING PANEL

By: Sara Nelson Bloom
Hearing Officer

Copies to: Robert I. Rabinowitz, Esq. (*via electronic and first-class mail*)
Stanley R. Goldstein, Esq. (*via electronic and first-class mail*)
Meyers Associates, L.P. (*via courier and first-class mail*)
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David R. Sonnenberg, Esq. (*via electronic mail*)

⁶ The hearing Panel has considered all of the parties' arguments. They are rejected or sustained to the extent that they are inconsistent with the views expressed herein.