

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JESSICA BOWER BLAKE
(CRD No. 5338580),

Respondent.

Expedited Proceeding
No. FPI180004

STAR No. 20180586729-01

Hearing Officer–JLC

**EXPEDITED HEARING PANEL
DECISION**

October 29, 2018

The expedited proceeding initiated against Respondent for failing to comply with FINRA Rule 8210 is dismissed. Enforcement is ordered to withdraw the Notice of Suspension.

Appearances

For the Complainant: Michael Watling, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Pro Se.

DECISION

I. Introduction

On July 17, 2018, the Department of Enforcement sent Respondent Jessica Bower Blake a Notice of Suspension, pursuant to FINRA Rule 9552, informing her that she would be suspended from associating with any FINRA member for failing to provide information to FINRA, unless she took corrective action. Blake stayed the suspension by requesting a hearing. A hearing was held by telephone on September 10, 2018.¹

In her defense, Blake asserted that she provided a response to the Rule 8210 request and that she did not know what other information she was required to provide because the Rule 8210 request was ambiguous.

¹ Citations to the Hearing Transcript are referenced as “Tr. __.” Citations to Complainant’s exhibits are referenced as “CX-__.”

For the reasons discussed below, the Hearing Panel finds that Enforcement did not have an adequate basis to conclude, at the time of Notice of Suspension was issued, that Blake failed to comply with Rule 8210. The Panel also finds that Enforcement failed to issue the Notice of Suspension in accordance with Rule 9552. Accordingly, Enforcement may not rely on the Notice of Suspension to suspend or bar Blake and Enforcement is ordered to withdraw the Notice.

II. Findings of Fact

A. Jessica Bower Blake

Blake first became employed in the securities industry in 2007.² Between April 2015 and January 2018, she was associated in a non-registered capacity at UBS Financial Services Inc. (“UBS”).³ She has not been associated with a FINRA member since her termination from UBS.

B. FINRA’s Inquiry

FINRA’s Office of Fraud Detection and Market Intelligence (“OFDMI”) opened an inquiry after UBS filed a Form 4530 reporting Blake’s termination for altering information on a client-signed document and ongoing performance concerns.⁴

In connection with this inquiry, on June 4, 2018, OFDMI issued Blake a letter, pursuant to FINRA Rule 8210, requesting documents and information (“Rule 8210 request”).⁵ The Rule 8210 request informed Blake that FINRA was conducting an inquiry of the Form 4530 filing made by UBS reporting her termination for altering information on client-signed documentation and for ongoing performance issues.⁶

The Rule 8210 request contained four requests for documents or information.⁷ The first request asked for a “[s]igned statement addressed to FINRA in response to the allegations.” (“Request No. 1”). FINRA did not specify the allegations in the Rule 8210 request or elsewhere.⁸ The second request asked, “Have you ever altered a client-signed document? If so, who was the client and what was the document?” (“Request No. 2”). The third request asked for “[c]opies of all relevant documents referring or relating to this matter.” (“Request No. 3”). And finally, the fourth request asked, “Are there any complaints regarding your employment at the Firm [UBS], which are open or were resolved within the preceding three years of the date of the current reportable event? If so, please provide additional documentation.” (“Request No. 4”).

² CX-1, at 7, 10, 12.

³ CX-1, at 4.

⁴ CX-2; Tr. 41-42.

⁵ CX-2.

⁶ CX-2.

⁷ CX-2.

⁸ Tr. 63-64.

On June 5, 2018, Blake was personally served with the Rule 8210 request at her residential address as listed in the Central Registration Depository (“CRD Address”).⁹ Blake’s response to the Rule 8210 request was due no later than June 25, 2018.¹⁰

On June 21, 2018, four days before the response deadline, Blake emailed the OFDMI investigator who issued the Rule 8210 request and said, “I am not sure what you need for this and I do not have any relevant documents because I no longer work for the firm”¹¹ She also told the OFDMI investigator that she did not plan to register or work in the field again, and that she did not see an address to send any information. She concluded the email with, “Please advise.”¹²

The OFDMI investigator considered Blake’s June 21 email to satisfy only Request No. 3 of the Rule 8210 request, the request for copies of all relevant documents.¹³ Given Blake’s partial response, the OFDMI investigator replied to Blake’s email the next day. In his email, he provided Blake with his address and informed her that Request No. 1 of the Rule 8210 request remained outstanding.¹⁴ Specifically, he said, “What we need is a statement in response to the allegations reported by the Firm.”¹⁵ In his email response, he did not identify the allegations or attach a copy of UBS’ Form 4530 filing. He also never told Blake in his email, or at any time thereafter, that Request Nos. 2 and 4 also were outstanding.¹⁶

C. Enforcement Issues a Notice of Suspension to Blake

The next communication between FINRA and Blake came three weeks later, on July 17, 2018, when Enforcement issued the Notice of Suspension.¹⁷ The Notice of Suspension advised Blake that she would be suspended from associating with any FINRA member in any capacity on August 10, 2018, for failing to provide information to FINRA, unless she took corrective action by complying with the “requests”¹⁸ before that date.¹⁹ The Notice of Suspension did not specify

⁹ CX-1; CX-3.

¹⁰ CX-2.

¹¹ CX-4

¹² CX-4.

¹³ Tr. 45-46.

¹⁴ CX-4.

¹⁵ CX-4.

¹⁶ Tr. 64-65.

¹⁷ Tr. 65, 78-79; CX-5.

¹⁸ The Notice of Suspension repeatedly and incorrectly states that FINRA made “requests” for documents and information. Prior to the issuance of the Notice of Suspension, FINRA only sent one request for documents and information – the Rule 8210 request sent on June 4, 2018. FINRA never sent Blake a deficiency letter or second request for the documents and information.

¹⁹ CX-5.

which requests, documents, or information in the Rule 8210 request remained outstanding.²⁰ Rather, the Notice of Suspension appeared to indicate that Blake’s Rule 8210 failure was predicated on a complete failure to respond rather than a partial failure to respond. Specifically, the Notice of Suspension stated that Blake failed to comply with Rule 8210 because she “failed to respond to FINRA requests for documents and information in a letter dated June 4, 2018.”²¹

The Notice of Suspension also advised Blake that she could request a hearing and that a timely request for a hearing would stay the effective date of any suspension.²² The Notice of Suspension further advised Blake that if she failed to request termination of the suspension within three months of the date of the Notice (July 17, 2018), she would automatically be barred from association with any FINRA member in any capacity on October 22, 2018.²³ Enforcement sent the Notice of Suspension to Blake by certified mail to her CRD Address and to her email address.²⁴

D. Blake Requests a Hearing

Blake timely requested a hearing on August 9, 2018, thereby staying her suspension.²⁵ Later that same day, Blake replied to the email Enforcement staff sent her on July 17, 2018, attaching the Notice of Suspension. Blake said in her email, “I did reply to this matter! Please contact me so we can resolve the matter.”²⁶

On August 10, 2018, Enforcement staff replied to Blake’s email and informed Blake that Blake’s prior emails only responded to Request No. 3 of the Rule 8210 request, and that Blake would need to provide a supplemental response answering Request Nos. 1, 2, and 4.²⁷ Even though Blake’s suspension under the Notice of Suspension had been stayed when Blake requested a hearing, Enforcement staff incorrectly advised Blake that she was “due to be suspended today, August 10, 2018.”²⁸ Enforcement staff also provided Blake with an extension to provide a complete response, but then erroneously advised Blake that if she did not provide a complete response by August 16, 2018, Blake would be suspended from associating with any FINRA member in accordance with the Notice of Suspension.²⁹

²⁰ CX-5.

²¹ CX-5.

²² CX-5.

²³ CX-5.

²⁴ CX-5.

²⁵ CX-11.

²⁶ CX-9.

²⁷ CX-10.

²⁸ CX-10.

²⁹ CX-10.

On August 20, 2018, Enforcement staff followed up with Blake by telephone.³⁰ Unable to reach Blake, Enforcement staff left her a voicemail with contact information. Enforcement staff also stated that she could assist Blake with curing her Rule 8210 deficiency.³¹ Blake did not respond until the hearing.³²

At the hearing, Blake asserted that she provided a response to the Rule 8210 request and that she did not know what other information she was required to provide because the Rule 8210 request was ambiguous. Specifically, Blake testified that she could not provide a response to Request No. 1 of the Rule 8210 request because FINRA did not define or describe the allegations in Request No. 1.³³ The OFDMI investigator testified that, while the allegations were not specified in Request No. 1, the allegations were referenced in the first paragraph of the Rule 8210 request.³⁴

The first paragraph of the Rule 8210 request stated, “[t]his office is conducting an inquiry with respect to a Form 4530 filing made by UBS Financial Services Inc. (the “Firm”) reporting your termination for altering information on a client-signed document after recently receiving Firm discipline and for ongoing performance concerns.”³⁵ While the first paragraph may have contained the allegations to which OFDMI was referring to in Request No. 1, this connection is unclear. The first paragraph never refers to the statements UBS made in the Form 4530 filing as “allegations.” Likewise, the term “allegations” in Request No. 1 and the OFDMI investigator’s email is left undefined, and neither Request No. 1 nor the OFDMI investigator’s email tie the allegations to the Form 4530 filing.

III. Conclusions of Law

A. The Applicable Law

FINRA Rule 8210 authorizes FINRA, with respect to any matter involved in an investigation, complaint, examination, or proceeding, to (1) request information from associated persons, and (2) inspect their books, records, and accounts that are in their possession, custody,

³⁰ Tr. at 80-81.

³¹ Tr. at 80-81.

³² Tr. at 81-82.

³³ Tr. at 27, 68, 85-86, 88.

³⁴ Tr. 63.

³⁵ CX-2.

or control.³⁶ These requirements are “unequivocal” and “unqualified,”³⁷ and compliance is mandatory.³⁸

The importance of Rule 8210 is paramount. According to the Securities and Exchange Commission, Rule 8210 is “essential to FINRA’s ability to investigate possible misconduct by its members and associated persons.”³⁹ The scope of Rule 8210 is broad, giving FINRA a critical tool to protect investors and markets in the absence of subpoena power.⁴⁰ Failing to provide information “frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.”⁴¹

FINRA has two ways to enforce compliance with Rule 8210. FINRA may either file a complaint through a disciplinary proceeding or initiate an expedited proceeding pursuant to FINRA Rule 9552. Here, FINRA chose to initiate an expedited proceeding pursuant Rule 9552.

FINRA Rule 9552 “provide[s] a procedural mechanism for FINRA to address” violations of Rule 8210 “more expeditiously than would be possible using the FINRA disciplinary process.”⁴² “If a member, person associated with a member or person subject to FINRA’s jurisdiction fails to provide any information ... or testimony requested ... FINRA staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.”⁴³ The notice must state the specific grounds and include the factual basis for the FINRA action.⁴⁴

³⁶ FINRA Rules 8210(a)(1) and (2).

³⁷ *Dep’t of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *19 (NAC July 21, 2014) (citation omitted), *aff’d*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *aff’d sub nom. Troszak v. SEC*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016); *accord Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *54 (Sept. 24, 2015).

³⁸ See FINRA Rule 8210(c) (“No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.”).

³⁹ *Mielke*, 2015 SEC LEXIS 3927, at *54.

⁴⁰ *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *23 (Nov. 8, 2007); *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993).

⁴¹ *North Woodward Fin. Corp.*, 2014 FINRA Discip. LEXIS 32, at *20 (citing *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008)); see *Dep’t of Enforcement v. Jarkas*, No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *46-47 (NAC Oct. 5, 2015) (“Delay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest.”) (citation omitted).

⁴² Order Approving Proposed Rule Change Relating to FINRA Rule 8313, Exchange Act Release No. 69825, 78 FR 38771, at *38772 (June 27, 2013).

⁴³ FINRA Rule 9552(a)

⁴⁴ FINRA Rule 9552(c).

A member or person served with a Rule 9552 notice may request a hearing within 21 days of service of the notice.⁴⁵ A request for a hearing stays the effectiveness of the notice and therefore any suspension imposed under the notice.⁴⁶

B. Enforcement Prematurely Initiated a Rule 9552 Proceeding and Issued a Deficient Notice of Suspension.

The Panel considered whether Enforcement had an adequate basis to conclude, at the time it issued the Notice of Suspension, that Blake failed to comply with Rule 8210, whether Blake asserted a valid defense to Enforcement's allegation that she failed to comply with Rule 8210, and whether Enforcement issued the Notice of Suspension in accordance with Rule 9552.

The Panel finds that Enforcement did not have an adequate basis to conclude, at the time it issued the Notice of Suspension, that Blake failed to comply with the Rule 8210 request given the ambiguity of both Request No. 1 and the requests that remained outstanding under the Rule 8210 request.

The record demonstrates that Blake provided a response to the Rule 8210 request and asked the OFDMI investigator to advise her what remained for her to do to comply with the Rule 8210 request. In response to Blake's question, the OFDMI investigator advised her that she needed to respond to Request No. 1. But OFDMI never explained in its Rule 8210 request, and Blake was not otherwise informed, what those allegations were until the hearing. OFDMI also never attached a copy of the allegations or the Form 4530 to the Rule 8210 request. Moreover, it is not easy to discern, particularly for a non-registered person, that the language in a different paragraph of the Rule 8210 request that described the reason for FINRA's inquiry (i.e., the Form 4530 filing) was related to or tied to "the allegations" in Request No. 1—particularly, in light of the fact that the Rule 8210 request never referred to the language in UBS's Form 4530 report as "allegations."

When FINRA makes requests for documents and information, those requests must be clear and unambiguous. This is the crux of Blake's defense. Blake asserted that she was not informed of the allegations to which FINRA referred in Request No. 1 and therefore she could not provide an additional response to Request No. 1. The Panel finds Blake's defense to have merit. Request No. 1 of the Rule 8210 request was vague and ambiguous. A recipient of a Rule 8210 request should not have to guess what documents or information is being requested or have to connect the dots with language contained somewhere else in the Rule 8210 request to understand what information FINRA is seeking under a particular request.

Moreover, to the extent that Enforcement issued the Notice of Suspension because it concluded that Blake failed to comply with Request Nos. 2 and 4, this conclusion was flawed. No one at FINRA ever told Blake that those requests remained outstanding until *after*

⁴⁵ FINRA Rules 9552(d) and (e).

⁴⁶ FINRA Rule 9559(c).

Enforcement issued the Notice of Suspension and *after* Blake requested a hearing.⁴⁷ Fundamental fairness dictates that Blake should not be suspended under the Notice of Suspension for failing to comply with requests she did not reasonably understand were outstanding prior to the issuance of the Notice of Suspension. She did not understand that these were outstanding because the OFDMI investigator represented to her (albeit mistakenly) that only Request No. 1 remained outstanding, and Request No. 1 was ambiguous with respect to the allegations to which Enforcement requested Blake to respond.

In addition, even if Enforcement had an adequate basis to conclude that Blake violated Rule 8210, it did not issue the Notice of Suspension in accordance with Rule 9552. FINRA Rule 9552(c) states that FINRA's notice must state the specific grounds and include the factual basis for the FINRA action. Likewise, FINRA Rule 9552(a) states that the written notice must specify the nature of the failure. FINRA did not adequately describe the specific grounds and factual basis for its action.

Here, Enforcement issued a Notice of Suspension because it concluded that Blake did not comply with Request Nos. 1, 2, and 4 of the Rule 8210 request. However, FINRA never specified in its Notice of Suspension which requests in the Rule 8210 request remained outstanding. To further confuse matters, the Notice of Suspension appears to indicate that Blake's failure to respond to the Rule 8210 request was based on a complete failure to respond rather than a partial failure to respond.

C. Conclusion

After careful consideration, the Panel finds that Blake asserted a valid defense and that Enforcement did not have an adequate basis to conclude, at the time it issued the Notice of Suspension, that Blake failed to comply with Rule 8210. The Panel also finds that Enforcement failed to issue the Notice of Suspension in accordance with FINRA Rule 9552. Given these findings, Enforcement may not rely on the Notice of Suspension to suspend or bar Blake.⁴⁸

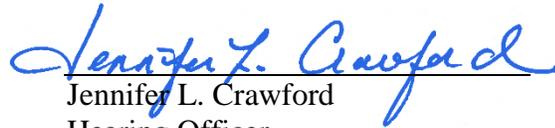
IV. Order

The Hearing Panel dismisses the expedited proceeding initiated against Respondent Jessica Bower Blake for failing to comply with FINRA Rule 8210. Enforcement is ordered to withdraw the Notice of Suspension.

⁴⁷ Enforcement's August 10 email to Blake compounded the confusion surrounding Blake's obligation to respond to the Rule 8210 request and her rights under Rules 9552 and 9559. Enforcement staff incorrectly advised Blake that she would be suspended on August 16, 2018, if she did not provide a complete response to the Rule 8210 request. But Blake could not be suspended on August 16, 2018, under the Notice of Suspension because her suspension was stayed when she requested a hearing on August 9.

⁴⁸ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

The dismissal of this expedited proceeding does not in any way preclude FINRA from issuing additional document and/or information requests to Blake to obtain the information it deems necessary to complete its inquiry. This dismissal also does not preclude FINRA from initiating a disciplinary or expedited proceeding if Blake fails to respond to such document and/or information requests.



Jennifer L. Crawford
Hearing Officer
For the Hearing Panel

Copies to:

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