

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding  
No. 20090192254

Hearing Officer—Andrew H. Perkins

**MEMORANDUM OPINION AND ORDER  
DENYING RESPONDENT'S MOTION TO SET ASIDE DEFAULT DECISION**

This matter is before the Office of Hearing Officers on Respondent's *pro se* motion to set aside the default decision (the "Motion") that was entered against him on May 3, 2011. For the reasons set forth herein, the Motion is denied.

**I. Undisputed Facts and Procedural Background**

As set forth in the Default Decision, the Department of Enforcement ("Enforcement") initiated the instant disciplinary proceeding on December 22, 2010. The Complaint alleged that Respondent: (1) converted insurance premium payments, in violation of FINRA Conduct Rule 2010; and (2) failed to provide information, documents, and testimony requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. Respondent was served with a First Notice of Complaint by certified mail at his residential address listed in the Central Registration Depository ("CRD") on December 22, 2010. The Department of Enforcement ("Enforcement") also served Respondent by certified mail at two alternate addresses. The receipt for the certified mailing sent to one of the alternate addresses—

**This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 11-09 (20090192254).**

[Respondent's parents' former address]—was signed by [Respondent's mother] on December 30, 2010. On January 24, 2011, Respondent was served with the Second Notice of Complaint by certified mail at the same three addresses. Respondent did not file a timely response, nor did he request an extension of time to do so before the proscribed deadline. Thus, the Hearing Officer granted Enforcement's motion for entry of default decision and issued a Default Decision against him on May 3, 2011.

On May 24, 2011, Respondent filed a notice of appeal, and, on August 11, 2011, he filed the instant Motion, claiming that the Default Decision should be set aside. However, the Motion did not clearly show good cause for the requested relief. Recognizing that the Motion was opposed by Enforcement, the Hearing Officer directed Respondent to appear for a conference call on September 1, 2011, to present argument in support of his Motion.

## **II. Standard of Review**

A Hearing Officer may set aside an entry of a default decision "for good cause shown."<sup>1</sup> Although FINRA has not specifically defined "good cause," it has nonetheless issued guidance identifying some factors the Office of Hearing Officers and the National Adjudicatory Council ("NAC") should take into consideration in making a decision regarding the issue. Hearing Officers and the NAC must consider:

- [1] whether the respondent notified the [CRD] of any change of address;
- [2] the length of time that has passed between the issuance of the default decision and the respondent's appeal or motion to set aside; and
- [3] the reasons for the respondent's failure to participate in the proceeding before the Hearing Officers.<sup>2</sup>

---

<sup>1</sup> FINRA Rule 9269(c).

<sup>2</sup> NASD Notices to Members 99-77, 1999 NASD LEXIS 49, at \*4 (Sept. 1999).

**This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 11-09 (20090192254).**

In addition, the Hearing Officer finds that Hearing Officers should consider the following three criteria in determining whether to set aside default decisions: (1) whether the default was willful; (2) whether the respondent has a meritorious defense; and (3) whether setting aside the default decision would prejudice Enforcement.<sup>3</sup>

I will discuss the factors in the order listed above.

**A. Respondent's Failure to Update his CRD Address**

Respondent moved from his CRD address without providing a new residential address to CRD. Respondent stated that he lived at several other addresses between December 2010 and March 2011.<sup>4</sup> Respondent currently lives at his parents' former address, which he used as his main mailing address between 2009 and 2011.<sup>5</sup> Although Respondent did not update his CRD address, Enforcement learned of [his parents'] address and served him with the Complaint at that address. As discussed in greater detail below, Respondent received the Complaint that Enforcement sent to [his parents'] address.

**B. Length of Time between the Issuance of the Default Decision and Respondent's Appeal**

The Office of Hearing Officers issued the Default Decision on May 3, 2011, and Respondent filed a notice of appeal on May 24, 2011. Respondent appealed timely. Respondent appealed the Default Decision after he received the copy served on him by the Office of Hearing Officers. When he received the Default Decision that barred him from the securities industry, he determined that he did not want "a default decision on [his] record that can [affect him] getting

---

<sup>3</sup> *Cf., e.g., Dixonweb Printing Co., Inc. v. Photo Intercept Coupon Sys., Inc.*, 1995 U.S. Dist. LEXIS 8871, at \*6 (June 27, 1995) (applying criteria to define "good cause" for motions to set aside final default judgments pursuant to Fed. R. Civ. P. 60(b)). Under Rule 60(b) a court may relieve a party from a final judgment for, *inter alia*, "mistake, inadvertence, surprise, or excusable neglect. ..." Fed. R. Civ. P. 60(b)(1).

<sup>4</sup> Conference Tr. 4-5.

<sup>5</sup> *Id.* at 6.

future employment.”<sup>6</sup> Before he saw the Default Decision he did not realize that “this could possibly harm me in the future.”<sup>7</sup>

**C. Respondent's Reason for Not Participating in the Proceeding before the Office of Hearing Officers**

Respondent elected not to participate in the proceeding before the Office of Hearing Officers because he “wanted to move on with [his] life.”<sup>8</sup> Respondent asserts that he was severely mistreated by his former firm. Respondent devotes his arguments to his various claims against his former firm and the personal pressures he was under relating to the failing health of his parents. In his Motion Respondent states: “ I planned on resigning and giving up my securities license because I really did not write many securities products and it cost me more to keep [than] I was receiving in income. I planned on moving on with my life with my book [of business] and resigning.”<sup>9</sup> Further, Respondent asks the Hearing Officer to reopen the case and change the Default Decision to state that he “voluntarily gave up [his] securities license.”<sup>10</sup> Respondent does not assert any defenses to the Complaint.

**D. Respondent's Willfulness in Default**

A respondent's default is deemed willful where he simply ignores the complaint without action.<sup>11</sup> Respondent admits that used his parents' address as his main mailing address between 2009 and 2011.<sup>12</sup> Respondent further admits that he received a copy of the Complaint from his

---

<sup>6</sup> Respondent's Mot. to Set Aside Default Decision.

<sup>7</sup> Conference Tr. at 10.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> Respondent's Mot. to Set Aside Default Decision.

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., *J & J Sports Productions, Inc. v. Emanuel*, 2007 U.S. Dist. LEXIS 7411, at \*3 (S.D. N.Y. Jan. 25, 2007).

<sup>12</sup> Conference Tr. at 5-6.

mother, [], in February or March 2011.<sup>13</sup> Nonetheless, he did not respond to the Complaint or request additional time to do so.

The Hearing Officer took into consideration the fact that Respondent is proceeding *pro se* and is therefore entitled to some deference. However, a *pro se* respondent “is not totally insulated from the imposition of default simply because he or she lacks counsel.”<sup>14</sup> “Upon proper notification of a pending [disciplinary proceeding respondents] must respond diligently, or face the concededly harsh consequences of judgment resulting not from consideration of the merits, but from the [respondents’] own inaction.”<sup>15</sup> In this case, Respondent’s failure to respond to the Complaint was due to his calculated decision that the proceeding would not adversely impact his future employment. Good cause for setting aside the Default Decision is not established simply because Respondent now determines that he erred in his decision not to participate in the proceeding before the Office of Hearing Officers.

#### **E. Existence of Meritorious Defense**

As noted above, Respondent has not claimed any defense to his failure to respond to the multiple Rule 8210 information requests FINRA staff sent him between August 2009 and July 2010. Respondent simply does not want the consequences of his failure to respond to adversely impact his employment in the future. Further, the issues he raises with respect to the allegation in the Complaint that he misappropriated approximately \$2,300 of insurance premiums do not directly relate to those allegations. Respondent claims that his former firm owes him money and improperly withheld commissions he was due, but these facts even if proven would not

---

<sup>13</sup> *Id.* at 7.

<sup>14</sup> See *Stith v. Thorne*, 2007 U.S. Dist. LEXIS 45242, at \*6 (E.D. VA June 12, 2007) (citing *Ballard v. Carlson*, 882 F.2d 93, 95 (4<sup>th</sup> Cir. 1989) and *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)).

<sup>15</sup> See, e.g., *Federal Deposit Ins. Corp. v. Francisco Inv. Corp.*, 873 F.2d 474, 477 1<sup>st</sup> Cir. 1989).

**This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 11-09 (20090192254).**

constitute a valid defense to the allegations in the Complaint. Accordingly, the Hearing Officer finds that Respondent has failed to show that he has a meritorious defense to the Complaint.

**F. Prejudice to Enforcement**

The record is not clear whether Enforcement would suffer any prejudice other than delay if the Default Decision is set aside. However, because Respondent failed to establish good cause for setting aside the Default Decision, this factor need not be addressed in this case.

**III. Conclusion**

Analyzing all of the foregoing factors as a whole, Respondent has failed to sustain his burden of demonstrating that the Default Decision should be set aside. Respondent's Motion does not assert any meritorious defenses to Enforcement's Complaint, and Respondent bears responsibility for his default. As such, Respondent's Motion must be DENIED.

---

Andrew H. Perkins  
Hearing Officer

Dated: September 22, 2011