

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Sally Nava Kanarek
Huntington Beach, CA,

Respondent.

DECISION

Expedited Proceeding No. FPI220008

Dated: April 19, 2023

Respondent failed to respond to two FINRA Rule 8210 requests. For this misconduct, Respondent is barred from associating with any FINRA member firm in any capacity.

Appearances

For the Complainant: Jennifer Crawford, Esq., Michael Manning, Esq., Loyd Gattis, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: Pro Se

Decision

This matter comes before us pursuant to a call for review under FINRA Rule 9559(q). On August 29, 2022, in accordance with FINRA Rule 9552, Sally Nava Kanarek was notified that she would be suspended from associating with any FINRA member in any capacity for her failure to respond to two requests for information and documents pursuant to FINRA Rule 8210. In response, Kanarek requested a hearing with FINRA's Office of Hearing Officers, which stayed the effectiveness of the suspension pending the outcome of the hearing.

A hearing panel was appointed to the matter and a hearing was held by telephone on November 10, 2022. Kanarek participated at the hearing, but she offered no documentary evidence. She did not dispute having received the FINRA Rule 8210 requests and admitted that she had not responded; however, she represented that she produced some documents to an individual she believed was a FINRA employee.

The Hearing Officer prepared a proposed written decision and provided it to the National Adjudicatory Council's Review Subcommittee. The Review Subcommittee called this proceeding for review.

After a review of the entire record, including arguments presented at the hearing and briefing on appeal, we find that Kanarek failed to respond to two FINRA Rule 8210 requests for information and documents during an investigation. As a result of her partial but incomplete responses during the investigation, Kanarek is barred in all capacities.

I. Factual Background

A. Kanarek's Background

Kanarek was associated with and employed by NYLIFE Securities LLC ("NYLIFE") as a nonregistered investment company and variable contracts products representative from May 2019 to July 2021. NYLIFE terminated her employment on July 5, 2021. The Uniform Termination Notice for Securities Industry Registration ("Form U5") NYLIFE filed upon her termination stated that Kanarek was terminated for violating firm policy by "engaging in an unapproved outside business activity as a 'caregiver' for a New York Life Insurance Company policyholder." The NYLIFE policyholder in question was HS, whom Kanarek described as a vulnerable elderly man for whom she cared full-time.

As a result of her termination, FINRA staff initiated an investigation.

B. FINRA's Investigation

FINRA began investigating Kanarek in August 2021. On June 2, 2022, FINRA requested information from Kanarek pursuant to FINRA Rule 8210. FINRA's request sought four categories of information and/or documents: (1) a list of expenses that Kanarek incurred on HS's behalf; (2) a list of payments that Kanarek received from HS; (3) a list of Kanarek's bank, brokerage, and credit card accounts, and statements for those accounts covering a nine-month period; and (4) Kanarek's 2020 tax return. The FINRA Rule 8210 request asked Kanarek to respond no later than June 16, 2022. She did not respond.

On June 22, 2022, FINRA sent a second FINRA Rule 8210 request to Kanarek. This request explained that FINRA had not received a response to its June 2 request and asked Kanarek to provide responses to the four categories of requested information to FINRA by July 7, 2022. The letter cautioned Kanarek that she "may be subject to the institution of an expedited or formal disciplinary proceeding leading to sanctions, including a bar from associating with any FINRA member firm." Again, Kanarek did not respond.

C. FINRA's Notice of Suspension

On August 29, 2022, FINRA's Department of Enforcement ("Enforcement") notified Kanarek that effective September 22, 2022, she would be suspended from associating with any

FINRA member firm in any capacity for her failures to respond to FINRA Rule 8210 requests (the “Suspension Notice”). The Suspension Notice advised Kanarek that if she took corrective action by complying with the FINRA Rule 8210 requests before September 22, the suspension would not take effect. The Suspension Notice also informed Kanarek that, pursuant to FINRA Rule 9552(e), she could request a hearing to contest the imposition of the suspension prior to the date her suspension effective date. The Suspension Notice indicated that a hearing request was to be in writing and filed with FINRA’s Office of Hearing Officers (“OHO”), that it must state with specificity any and all defenses to the suspension, and that a timely request for a hearing would stay the effective date of any suspension. Finally, the Suspension Notice cautioned Kanarek that if she failed to request termination of the suspension within three months of the date of the Suspension Notice, she would automatically be barred on December 2, 2022.

On September 22, 2022—the date that her suspension was to take effect—Kanarek emailed OHO and requested a termination of her suspension. Although Kanarek did not specifically request a hearing in her email or assert any defenses, OHO treated it as a hearing request, staying Kanarek’s suspension.

II. Procedural History

A. Expedited Hearing Before the Hearing Panel

Following Kanarek’s hearing request, a pre-hearing conference was held on October 4, 2022. At the pre-hearing conference, Kanarek admitted that she had failed to respond to the FINRA Rule 8210 requests but stated as her defense her inability to access the requested information and documents. She also indicated that she had provided some “notes” to FINRA, without providing further detail. Because she had only provided her defenses orally, the Hearing Officer directed Kanarek to state her defenses in writing. On October 6, 2022, Kanarek provided her supplemental submission, maintaining that her defenses were that (1) her health conditions prevented her from providing the requested information and (2) that she did not have the requested information and documents. In response, on October 12, 2022, Enforcement requested that Kanarek provide for support her defenses, including what steps she has taken to obtain the requested financial statements, the nature of the alleged health concerns that prevent her from complying with the Rule 8210 requests, and supporting documentation of all medical conditions that render Kanarek unable to comply with the requests.

A telephonic hearing was held before a Hearing Panel on November 10, 2022. Enforcement called as its witness a director in FINRA’s Department of Member Supervision, who authenticated the June 2022 FINRA Rule 8210 requests for information and documents as well as the USPS documents reflecting proper service on Kanarek. He testified that Kanarek failed to respond to the requests and that the information FINRA sought was necessary to complete FINRA’s investigation of Kanarek’s potential misconduct. FINRA was concerned that Kanarek’s unapproved outside business activities were potentially masking more serious misconduct such as conversion, misappropriation, or undue influence over HS.

Kanarek did not deny that she received the FINRA Rule 8210 requests for information and documents and again admitted that she failed to respond. She testified extensively about

unrelated legal issues facing her and HS, stating that because she devoted all of her time and resources on a separate legal matter involving HS, she could not competently defend herself in the FINRA expedited proceeding. In addition, she reiterated that she had provided FINRA with “[HS’s] notes on the meeting” and “other notes.”

B. The Call for Review

As required by FINRA Rule 9559(o), the Hearing Officer provided to the National Adjudicatory Council’s (“NAC”) Review Subcommittee with the Hearing Panel’s draft Expedited Decision. The Review Subcommittee called the matter for review pursuant to FINRA Rule 9559(q).

The NAC directed the parties to submit briefs addressing the purported “notes” that Kanarek allegedly turned over to FINRA and whether the NAC should evaluate Kanarek’s failure to respond to the June 2022 FINRA Rule 8210 requests as a partial but incomplete failure to respond or a complete failure to respond.

In its brief to the NAC, Enforcement represented that it had issued two additional FINRA Rule 8210 requests to Kanarek in October 2021 and April 2022.¹ The requests sought information related to: (1) Kanarek’s job at NYLIFE and the termination of her association with NYLIFE; (2) the scope and extent of her “caregiving” work for HS and others, and whether she disclosed those activities to NYLIFE; (3) whether she was experiencing financial hardship; and (4) her current phone number and email address. One question asked for notes of conversations with HS. Kanarek responded to some of those requests; her response included three pages of notes.

Enforcement maintains that the earlier FINRA Rule 8210 requests were not included in the record before the Hearing Panel because they were not within the scope of Enforcement’s notice of suspension that initiated the instant call for review. Although not addressed during the hearing below, Enforcement now acknowledges in its brief that Kanarek’s vague references to “notes” that she turned over to FINRA were probably related to notes that she produced in response to the earlier Rule 8210 requests and concedes that in this case, it would be appropriate to apply the sanctions guideline for partial failures to respond.

Kanarek did not submit a brief.

¹ Concurrent with the filing of its brief, Enforcement also filed a motion to introduce additional evidence. Enforcement sought to introduce a press release by another regulator concerning Kanarek. Pursuant to FINRA Rule 9346(b), a motion for leave to introduce additional evidence shall demonstrate that there was good cause for failing to introduce the evidence below and why the evidence is material. The NAC Subcommittee empaneled to consider this matter recommends denying Enforcement’s request, finding the proposed evidence was inflammatory and not material. We concur with the Subcommittee’s recommendation to deny Enforcement’s motion and adopt it as our own.

III. Discussion

A. Kanarek Violated FINRA Rule 8210

FINRA Rule 8210 is the principal means by which FINRA obtains information from member firms and associated persons in order to detect and address industry misconduct. *See, e.g., Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *23 (Nov. 8, 2007) (stating that, because of a lack of subpoena power, Rule 8210 is a “vitally important” tool to acquire information). Rule 8210 requires FINRA members and their associated persons to provide information to FINRA in the course of an investigation. Firms and persons subject to FINRA’s jurisdiction are obligated to provide “full and prompt cooperation” in response to any request for information issued by FINRA. *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009).

A failure to respond completely to FINRA Rule 8210 requests is a serious violation because it “frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.”² *Dep’t of v Enf’t v. N. Woodward Fin. Corp.*, Complaint No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *20 (FINRA NAC July 21, 2014) (*citing PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008)), *aff’d*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *aff’d*, *Troszak v. SEC*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016). The Commission has long held that the duty to comply with FINRA Rule 8210 is “unequivocal.” *See Michael Markowski*, 51 S.E.C. 553, 557 (1993), *aff’d*, 34 F.3d 99 (2d Cir. 1994). Kanarek had an unequivocal duty to respond to the Rule 8210 requests completely. The record reflects, and Kanarek admits, that she received the June 2022 FINRA Rule 8210 requests but did not respond. Thus, it is evident that Kanarek violated the rule.

B. Kanarek Failed to Establish a Valid Defense

In her October 6, 2022 supplemental filing, Kanarek asserted two defenses to her failure to respond to the Rule 8210 requests—that she is being treated by a psychiatrist for “mental health stress” and that she has “no other documents to submit.” Because Kanarek has failed to provide any evidentiary support for either, these defenses fail.

1. Kanarek Failed to Demonstrate that She Has a Mental Health Condition that Prevented Her from Complying with the FINRA Rule 8210 Requests

Kanarek represents that she is under the treatment of a psychiatrist for anxiety, depression, and insomnia. At the hearing, however, she did not present any evidence to support her claims. It is well established that unsubstantiated personal or medical problems do not excuse a failure to respond to FINRA Rule 8210 requests. *Lee Gura*, Exchange Act Release No. 50570, 2004 SEC LEXIS 2406, at *8 (Oct. 20, 2004) (unsubstantiated personal and medical

² An associated person also violates FINRA Rule 2010 when he or she violates any FINRA rule, including FINRA Rule 8210. *Dep’t of Enf’t v. Gallagher*, Complaint No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *11 n.9 (FINRA NAC Dec. 12, 2012).

problems do not excuse a failure to respond to Rule 8210 request); *John A. Malach*, Exchange Act Release No. 32743, 1993 SEC LEXIS 2026, at *5 (Aug. 12, 1993) (unsubstantiated personal problems do not excuse a failure to furnish information).

Even if Kanarek had demonstrated that she had personal or medical problems, she still has the burden of demonstrating how those problems rendered her unable to comply with the Rule 8210 requests. *See, e.g., Li-Lin Hsu*, Exchange Act Release No. 78899, 2016 SEC LEXIS 3585, at *10-11 & n.13 (Sept. 21, 2016) (respondent provided no medical records to substantiate her claimed injuries from a car accident or establish that they prevented her from responding to Rule 8210 requests).³ Kanarek has failed to meet this burden. In her testimony and written submissions before OHO, Kanarek wholly failed to describe how any personal or medical problem prevented her from providing the requested information. Moreover, at the hearing, Kanarek spent a significant amount of time testifying about her extensive participation in legal proceedings involving HS over the past months, thereby demonstrating that her claimed health problems did not prevent her from also responding to FINRA's requests during that same time period. Kanarek also testified that she was acting as a full-time caregiver for HS, further undermining her defense. Accordingly, Kanarek has not established that any personal or medical problems excused her failure to comply with the Rule 8210 requests.

2. Kanarek Failed to Demonstrate That She Could Not Access the Information Sought

Kanarek's second defense—that she was unable to access the documents requested—also fails. Kanarek provided no testimony or other evidence memorializing any attempts that she made to access the documents. Kanarek had a responsibility to explain her efforts to obtain the documents that FINRA requested, and the obstacles, if any, she encountered while attempting to obtain those documents. *See CMG Inst. Trading*, 2009 SEC LEXIS 215, at *23. In any event, contrary to her written defenses, Kanarek testified that she had the requested bank statements and 2020 tax document and was willing to provide them, but her “circumstances” prevented her from doing so. Additionally, on October 24, 2022, in an email to Enforcement, Kanarek stated that “[she] would agree to discipline of a year suspension on condition of providing [FINRA] all the documents [it] requested....,” further belying her argument that there was an actual impediment to her compliance with FINRA's requests.

³ *See also Jeffrey A. King*, Exchange Act Release No. 52571, 2005 SEC LEXIS 2516, at *9 (Oct. 7, 2005) (respondent failed to substantiate claim that divorce and accompanying stresses prevented him from responding to requests for information under Rule 8210 predecessor rule); *Dep't of Enf't v. Vedovino*, Complaint No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *29-30 (FINRA NAC May 15, 2019) (respondent failed to show how complying with Rule 8210 requests would interfere with his opioid recovery program); *Dep't of Enf't v. Jarkas*, Complaint No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *40-41 (FINRA NAC Oct. 5, 2015) (respondent showed that he had suffered a series of severe medical problems but failed to show how they prevented him from providing OTR testimony), *aff'd*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285 (April 1, 2016).

IV. Sanctions

FINRA's rules provide two avenues to enforce compliance with FINRA Rule 8210 requests. It can file a disciplinary complaint alleging a violation of Rule 8210, or it can pursue an expedited process to address a violation of Rule 8210 more quickly. *See Christine D. Memet*, Exchange Act Release No. 83711, 2018 SEC LEXIS 1876, at *3-4 (July 25, 2018).

A. Considerations in an Expedited Proceeding for FINRA Rule 8210 Violations

Under FINRA Rule 9559(q), when the Review Subcommittee calls a draft expedited decision for review, the NAC may impose a suspension, bar, or any other fitting sanction, pursuant to FINRA Rule 8310(a). In compliance with FINRA Rule 9552(c), the Suspension Notice served on Kanarek informed her of the possible sanctions she faced.

In considering what sanctions to impose, we are mindful of the primary goals of a FINRA Rule 9552 proceeding. An expedited proceeding under this rule is designed to encourage an associated person to comply with FINRA Rule 8210 requests as promptly as possible. An individual's compliance assists FINRA in performing its investigatory and enforcement functions, which further support FINRA's mission of protecting investors and market integrity.

The authorization of an expedited proceeding for a failure to cooperate with an investigation reflects the importance of compliance with FINRA's Rule 8210 requests. The purpose of an expedited process is to provide a means of addressing the "misconduct in an accelerated timeframe." *Memet*, 2018 SEC LEXIS 1876, at *3-4.

Even though FINRA Rule 9552 is expedited in nature, the rule provides an associated person multiple opportunities to cure the deficiencies in his or her FINRA Rule 8210 responses. First, the Suspension Notice provides that individual 21 days to correct deficiencies. If he or she complies and corrects the deficiencies, the associated person can prevent the imposition of any sanction. In the alternative, he or she can request a hearing, staying the effective date of the suspension. If the associated person does not comply during this period and does not request a hearing, the suspension is imposed. At this point, the associated person has another three months to comply with the Rule 8210 requests. If he or she then fails to comply within three months, a bar is automatically imposed. The automatic imposition of a bar is necessary because, despite repeatedly being given opportunities to respond fully and completely to FINRA Rule 8210 requests, the individual has demonstrated a repeated unwillingness to cooperate with FINRA. A bar serves to deter others from similar misconduct. *See Gregory Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *45 (Apr. 17, 2014) ("Goldstein's willingness to defy the regulatory process and impede FINRA's investigation into potentially serious misconduct indicates that Goldstein poses a continuing danger to the investing public that is appropriately remedied by a bar.").

In an expedited proceeding for failure to respond to FINRA's requests for information, Enforcement may ask the Hearing Officer to impose a bar as a sanction for a respondent's violation of Rule 8210. *See Dep't of Enf't v. Gregory E. Goldstein*, Expedited Proceeding No. FPI120005, 2013 NASDR OHO LEXIS 164 (Jan. 4, 2013). When considering whether a bar is

the appropriate sanction, the Hearing Officer should then apply the FINRA Sanction Guidelines and the relevant general and violation-specific principle considerations. *Id.* The NAC is undertaking the same exercise here—we apply the Sanction Guidelines because we are tasked with imposing a sanction to address Kanarek’s FINRA Rule 8210 violation.⁴

B. A Bar Is the Standard Sanction Under the Guidelines for FINRA Rule 8210 Violations, Absent Mitigating Factors

We now turn to the FINRA Sanction Guidelines.⁵ There is no dispute that Kanarek did not respond to the June 2022 FINRA Rule 8210 requests that are at issue in this matter. However, Enforcement concedes that Kanarek did provide some responses to earlier Rule 8210 requests in the same investigation. Therefore, under the circumstances we evaluate her failure to respond under the Guidelines as a partial, rather than a complete, failure to respond. *See Bradley C. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *23 (Jan. 21, 2022). In *Reifler*, the Commission held that FINRA improperly analyzed Reifler’s refusal to respond to certain questions during on-the-record testimony as a complete failure to respond under the Sanction Guidelines. Because Reifler had answered some questions and had earlier provided information in response to written requests, FINRA should have evaluated Reifler’s refusal as a partial failure to respond. We follow *Reifler* for the purpose of considering all potentially relevant facts when imposing our sanction.

For individuals who provide a partial but incomplete response to a FINRA Rule 8210 request, the Guidelines instruct that “a bar is standard,” unless the respondent can demonstrate that the information provided substantially complied with all aspects of the request.⁶ When mitigation exists, adjudicators should consider suspending the individual in any or all capacities for up to two years.⁷ The Guidelines also provide three specific principal considerations in determining sanctions when an individual has provided a partial but incomplete response to a FINRA Rule 8210 request, including: (1) the “[i]mportance of the information requested that was not provided as viewed from FINRA’s perspective, and whether the information provided was relevant and responsive to the request;” (2) the “[n]umber of requests made, the time the

⁴ In contrast, in failure to pay arbitration award matters—governed by FINRA Rule 9554—the Hearing Officer often suspends a respondent and deprives them of the benefits of FINRA membership until the award is paid or one of the available defenses is established. *See, e.g., Dep’t of Enf’t v. Jeff Corey McElroy*, Expedited Proceeding No. ARB220007, 2022 NASDR OHO LEXIS 18724 (Aug. 18, 2022). Such an indefinite suspension is not a disciplinary sanction that requires a Sanction Guidelines analysis.

⁵ *FINRA Sanction Guidelines* (2022) https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

⁶ *Guidelines*, at 93.

⁷ *Id.*

respondent took to respond, and the degree of regulatory pressure required to obtain a response;” and (3) the “reasons offered by the respondent to justify the partial but incomplete response.”⁸

C. Kanarek is Barred for Her Partial Failure to Respond

Applying the violation-specific principal considerations to Kanarek’s misconduct, we conclude that a bar is the appropriate sanction. First, the documents that Kanarek failed to produce were critically important from FINRA’s perspective. Kanarek’s Form U5 disclosed troubling information about an outside activity involving her care for an elderly customer, which justified an investigation to determine whether conversion, misappropriation, undue influence, or other related serious misconduct occurred. Information concerning financial transactions between Kanarek and HS—such as a list of payments that he made to her and Kanarek’s bank and credit card statements—was critical to that inquiry. Kanarek’s failure to respond prevented FINRA from learning about any payments from HS, hindering FINRA’s investigation in its early stages. In addition, the “notes” that Kanarek provided to FINRA in response to earlier Rule 8210 requests were neither relevant nor responsive to FINRA’s June 2022 requests.

Next, the number of FINRA Rule 8210 requests made, and the degree of regulatory pressure exerted by FINRA, also justify a bar. FINRA issued two Rule 8210 requests to Kanarek in June 2022. Kanarek’s responses were due by early July. Both requests warned Kanarek that she could be barred for failing to comply. Nevertheless, FINRA had to issue a notice of suspension and litigate the resulting expedited proceeding through a hearing. Having to resort to litigation constitutes significant regulatory pressure. *See Goldstein*, 2014 SEC LEXIS 1350, at *41–42; *Vedovino*, 2019 FINRA Discip. LEXIS 20, at *31 (barring the respondent because, among other factors, FINRA had to initiate an expedited proceeding in an attempt to secure compliance). Despite that regulatory pressure, Kanarek still has not provided any of the documents or information that FINRA requested, more than eight months later.

Finally, Kanarek has not asserted, and the record does not reflect, any mitigating factors. Nor has Kanarek given any valid reasons for her deficiencies. As discussed above, Kanarek claimed that medical problems prevented her from responding to the Rule 8210 requests. However, Kanarek did not introduce any evidence at all, let alone credible evidence from a medical provider or other source to support this claim. She also failed to explain why such problems prevented her from complying. To the contrary, Kanarek testified repeatedly about her extensive participation in legal proceedings involving HS over the past months, demonstrating that no health problems actually prevented her from responding to FINRA’s requests during that same period. Kanarek also contended that she was unable to provide everything that FINRA requested. However, that defense was contradicted by Kanarek’s testimony admitting that she had the documents but was somehow unable to turn them over to FINRA, as well as her October 24, 2022 email to Enforcement in which she offered to turn over the documents Enforcement sought in exchange for a suspension. Thus, the record shows that Kanarek was able to respond to the Rule 8210 requests, had she chosen to do so.

⁸

Id.

We find that Kanarek's repeated failures to cooperate with FINRA's investigation—as she was required to do pursuant to FINRA Rule 8210—render her unfit to serve in an industry that heavily relies on the honesty and integrity of its securities professionals. The bar is imposed to protect the public interest. Given that aggravating factors predominate here and that Kanarek has failed to establish the presence of any mitigating factors, she has not shown that a sanction less than a bar would protect the public. Accordingly, Kanarek is barred from associating with any member firm in any capacity for her FINRA Rule 8210 violation.

V. Conclusion

We conclude that Kanarek failed to respond to two requests for information and documents, in violation of FINRA Rules 8210 and 2010. For her misconduct, Kanarek is barred from associating with any member firm in all capacities, effective upon service of this decision. Pursuant to Rule 9559(n)(4), Kanarek is also ordered to pay \$2,121.10 in hearing costs.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary