

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RODERICK KENNETH DAY
(CRD No. 3198714),

Respondent.

Expedited Proceeding
No. FPI200001

STAR No. 20190641740

Hearing Officer–DW

**EXPEDITED HEARING PANEL
DECISION**

August 17, 2020

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide documents and information in response to FINRA Rule 8210 requests issued to him by FINRA staff. Respondent is also ordered to pay hearing costs.

Appearances

For the Complainant: Loyd Gattis, Esq., and Mark S. Geiger, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: *Pro se*.

DECISION

I. Introduction

The Department of Enforcement requested documents and information from Respondent Roderick K. Day, formerly a registered representative of a FINRA member firm, in connection with its investigation into Day's alleged outside business activities. Despite Enforcement's repeated requests, Day failed to produce his bank statements and other financial records within the scope of the inquiry.

After three requests for the same materials, Enforcement sent Day a Notice of Suspension pursuant to FINRA Rule 9552. The notice informed Day that he would be suspended from associating with any FINRA member in any capacity for failing to provide information to FINRA unless he took corrective action. Day stayed his suspension by requesting a hearing.

A hearing was held by videoconference on June 26, 2020, before this Hearing Panel.¹ At the hearing, Day asserted that he did nothing wrong in his outside activities, and that Enforcement's requests were an unfair invasion of his and his clients' privacy interests in transactions unrelated to his work as a registered representative. Day also maintained that he possessed no responsive records. For the reasons explained below, we reject Day's defenses and bar him from associating with any FINRA member firm in any capacity.

II. Findings of Fact

A. Day's Background

Day entered the securities industry in February 1999.² Over his career, he associated with several different member firms.³ In November 2018, Day was discharged by one of those firms, Securities America, Inc. Securities America filed a Uniform Termination Notice of Securities Industry Registration (Form U5) disclosing Day's termination after its internal review of whether Day "charged improper fees to certain clients and instructed those clients to make payments of the fees directly to him."⁴ Day later associated with other member firms. His last association with a FINRA member ended in November 2019.⁵

B. Enforcement's Investigation

Securities America's disclosure of its internal inquiry led to Enforcement's investigation.⁶ Enforcement obtained documents from the firm, and on October 25, 2019, sent a letter to Day requesting documents from him pursuant to FINRA Rule 8210.⁷ The request was sent to Day's Central Registration Depository ("CRD") address.⁸

Among other information and documents, the request sought several categories of documents: (1) copies of all documents, including checks, receipts or wire instructions, related to any fee payment that Day directed a client to pay to him; (2) any other documents related to the fees; and (3) copies of all monthly bank statements for accounts where the fees were deposited. The request also required Day to provide a statement identifying the circumstances surrounding

¹ Citations to the hearing transcript are referenced as "Tr. ___." Citations to Complainant's exhibits are referenced as "CX-___."

² CX-2, at 1.

³ CX-2, at 1.

⁴ CX-10, at 6.

⁵ CX-2, at 1.

⁶ Tr. (Johnson) 22.

⁷ Tr. (Johnson) 24–25; CX-11.

⁸ Tr. (Johnson) 28–29. The request was sent by first-class and certified mail. The copy sent by certified mail was later returned to FINRA undelivered, as the mailing was not claimed at the post office after a notice was left at Day's residence. CX-13. The copy of the request sent by first-class mail was not returned. Tr. (Johnson) 32–33. Day did not dispute receiving the first-class mailing.

each instance of Day asking a customer to pay him fees. The statement was to include the identity of each customer, as well as the purpose, amount, and date of each fee. The request required Day to respond by November 8, 2019.⁹

Day did not respond.¹⁰ On November 12, 2019, Enforcement sent a second request, also to Day's CRD address. This request re-transmitted the original request and directed Day to produce the previously requested items by November 26, 2019.¹¹

On the day his response was due, Day called the investigator responsible for the request and asked for more time.¹² After the investigator told him he needed to request an extension in writing, Day did not follow up in writing until December 18, 2019. The investigator then granted Day an extension of time to respond until December 26, 2019—almost two months after the original due date.¹³

Day's first substantive response to the request came a day after that extended deadline, on December 27, 2019.¹⁴ His emailed response included no documents or other materials. The response provided only a written narrative that generally described how Day "specialized in educating the public about financial awareness," and to that end he conducted "educational seminars" or "group discussions." Day explained that as a part of these "discussions," he would at times receive a "speaking stipend" or be compensated "for expenses associated with being available to the group for consultations." Day insisted that his services did not involve securities solicitations or any products offered by his broker-dealer. And while Day claimed that his broker-dealer was aware of his outside activity, he did not say whether his employer was aware he was receiving compensation for this business. Day's response offered no specifics regarding the dates and amounts of the fees he received or the customers who paid him, as called for by Enforcement's request.¹⁵

After considering his response, Enforcement sent Day a third request under Rule 8210 on February 13, 2020. The request explained that Day's prior response "did not provide much of the information or any of the documents requested." The request advised Day that "[t]o date FINRA staff has not received your complete response, nor has FINRA received a request for an extension of time to respond." The letter identified the specific information and documents called for by the original request and explained why Day's initial response was not responsive to each of the three requests related to his outside business activity. The request reiterated that Day had

⁹ CX-11.

¹⁰ Tr. (Johnson) 33.

¹¹ CX-14. This request was also sent by both certified and first-class mail. Tr. (Johnson) 35. The certified mailing was successfully delivered on November 19, 2019. CX-16.

¹² Tr. (Johnson) 37.

¹³ CX-17.

¹⁴ Tr. (Johnson) 38; CX-17.

¹⁵ CX-17, at 1–2.

thus far produced *no* documents. The request called for Day to provide his complete response by February 21, 2020.¹⁶

On the day of the deadline, Day called to request more time. Enforcement granted him an extension to February 24, 2020.¹⁷ On February 25, 2020, Day emailed his response to Enforcement. The response, once again, included no documents. Nor did Day provide any additional information regarding his outside business activities. Regarding the requests related to these activities, the response stated “[t]rying to gather all info by memory and documents, as completely as possible, but should have this soon.”¹⁸

Thereafter, Enforcement asked Day to provide a complete response by March 9, 2020. On March 11, 2020, Day emailed Enforcement that he was “sending the response today.” According to Day, he was forwarding Enforcement an IRS Form 1099 income statement.¹⁹ According to Day, the Form 1099 reflected income he earned from at least 15 institutions dating back to 2004.²⁰ Enforcement never received the Form 1099, or any of the requested documents from Day.²¹ On March 25, 2020, Enforcement issued Day a Notice of Suspension.²²

C. Enforcement Issues a Notice of Suspension

The Notice of Suspension advised Day that he would be suspended from associating with any FINRA member in any capacity on April 20, 2020, for failing to provide information to FINRA, unless he took corrective action by complying with Enforcement’s requests before that date.²³ In particular, the Notice of Suspension directed Day to provide (1) the names of individuals or entities who paid fees directly to him, the amount of fees paid, and a description of services rendered; (2) copies of all documents relating to the fees, including checks, receipts and wire instructions; and (3) the dates and circumstances surrounding any disclosure of Day’s activities to his employer.²⁴ Enforcement sent the Notice of Suspension by certified and regular mail to Day’s CRD Address, and to his email address.²⁵

¹⁶ CX-18. This request was sent by certified mail and to Day’s personal email address. Tr. (Harrison) 51. The certified mailing was returned unclaimed. CX-19. Day received the emailed version of the request. Tr. (Harrison) 53-54.

¹⁷ Tr. (Harrison) 54–55; CX-21.

¹⁸ CX-21.

¹⁹ CX-22, at 1.

²⁰ Tr. (Day) 107.

²¹ Tr. (Harrison) 59–60.

²² CX-23.

²³ CX-23.

²⁴ CX-23.

²⁵ Tr. (Harrison) 62–63.

D. Day Requests a Hearing

On April 19, 2020, the day before he was due to be suspended, Day emailed Enforcement that “I would like to request a hearing.” Day requested a hearing “because this inquiry has caused an unnecessarily adverse effect on [his] clients.” According to Day, “[a] suspension would further complicate the matter, given the overall economic uncertainty, and climate due to the pandemic.”²⁶ By requesting a hearing, Day stayed the suspension.²⁷

Enforcement continued its effort to obtain the outstanding materials from Day.²⁸ On May 4, 2020, Day provided Enforcement a narrative statement with additional general information regarding his outside business, but again failed to provide any documentation or any specific information regarding his compensation.²⁹

E. Day Produces A Narrative of His Fees

On May 8, 2020, Day provided additional information about his outside business that for the first time supplied specific information regarding payments he received.³⁰ Day again provided no supportive bank records or other documents.³¹ Day provided a narrative response that described six payments, each from a different familial set of customers.³²

According to Day’s narrative, the first family paid him \$3,600 at an unspecified time in 2018. A member of that family was a customer of Day’s employer, Securities America. Day described the purpose of the payment as “being available to counsel the whole family for personal and private concerns, and reimbursement for expenses related to travel.” Day “did not disclose these specific personal matters to Securities America, or any other Broker Dealer.”³³

The narrative described receiving similar payments from other families. Day claimed a \$2,800 payment from a second family also in 2018. A \$3,600 payment from the third family and a \$1,200 payment from a fourth family came that same year. Day also identified a \$1,200 payment from a fifth family, sometime in 2017. Lastly, he reported a \$2,700 payment from a sixth family sometime in 2018.³⁴

²⁶ CX-25.

²⁷ FINRA Rule 9552(d).

²⁸ Tr. (Harrison) 65–66.

²⁹ Tr. (Harrison) 66–68; CX-26, at 4.

³⁰ Tr. (Harrison) 69–70; CX-27, at 4.

³¹ Tr. (Harrison) 69–70.

³² CX-27, at 4.

³³ CX-27, at 4.

³⁴ CX-27, at 4.

F. The Hearing

At the hearing, Enforcement explained its reasons for seeking Day's records. It sought documentation of Day's payments as part of its investigation into whether Day was potentially violating FINRA rules by engaging in an undisclosed outside business activity.³⁵ Enforcement regarded records of the payments to Day necessary to determine the duration and scope of his outside activity. Enforcement also sought Day's records to determine whether customers of Securities America were led to believe that the outside activity was connected in some manner to the broker-dealer.³⁶

Enforcement also presented evidence that Day's narrative could not be relied upon to get to the bottom of his outside activity. The narrative reflects none of the income earned by Day from various institutions dating back to 2004 that was presumably reflected on the never-produced Form 1099. Also, through other aspects of its investigation, Enforcement identified an additional customer that Day failed to disclose in his narrative.³⁷ E-mails Enforcement obtained from Day's former employer indicated that one of the customers that paid money to Day was confused as to the purpose of the payment.³⁸ Enforcement obtained a copy of a check written by another customer that indicated in the memo portion that the customer believed the purportedly outside payment was related to Securities America. That check also indicated that the customer paid Day \$2,800, not the \$1,200 Day claimed in his narrative.³⁹ Emails obtained by Enforcement revealed that still another customer paid Day \$3,800, more than the \$2,800 payment disclosed in Day's narrative.⁴⁰ And while Day disclosed receiving payments in 2018 and 2017, other evidence indicated that he received payments during earlier periods as well.⁴¹

Day's failure to produce his bank statements, checks and other requested records frustrated Enforcement's ability to determine the scope, magnitude and nature of his outside activity.⁴² In explanation of his conduct, Day maintained that his financial education and counseling clients "wish to remain private," and "do not want to be involved" or "named in these

³⁵ Tr. (Harrison) 79–80. FINRA Rule 3270 prohibits registered persons from being compensated or having a reasonable expectation of receiving compensation from any other person as a result of any business activity outside the scope of his or her relationship with the member firm, unless the registered person has provided advance written notice to the firm.

³⁶ Tr. (Harrison) 79–80.

³⁷ Tr. (Harrison) 82; CX-9.

³⁸ Tr. (Harrison) 85–86; CX-6.

³⁹ Tr. (Harrison) 89; CX-4.

⁴⁰ Tr. (Harrison) 87–88; CX-6.

⁴¹ Tr. (Harrison) 82–84; CX-9.

⁴² Tr. (Harrison) 82–90.

cases.”⁴³ Day also complained that he thought the investigative and disciplinary process was “unfair” to the extent that he “didn’t have a right to privacy” in his outside activities.⁴⁴

Day also asserted that he had closed his bank accounts during the relevant periods and no longer had access to those accounts.⁴⁵ He claimed that he contacted his old bank in the past two months and was told to go in person to a branch office in order to obtain his historical records. Day “tried to go twice,” but found his local branches closed, presumably as a result of the Covid-19 pandemic. Day added that even if he were able to obtain the relevant bank records, “there are things within these records that I don’t think should be public information, and I consider that stuff very private.”⁴⁶

Day finally maintained that “I’ve always been taught . . . to communicate through [my broker-dealer] if there is a regulatory inquiry or investigation, and that is what I was doing. I sent all I had to them.”⁴⁷ According to Day, “when FINRA sent me a letter requesting information, I contacted my former broker-dealer and I said, well, wasn’t I supposed to be submitting all this through the broker-dealer whenever someone inquires a regulator (sic), again, this is my first time and they said yes. And I was sending information to my broker-dealer.”⁴⁸ But Day later confirmed that any submissions to his broker-dealer preceded the closing of his account (and presumably Enforcement’s inquiry), as “before [the bank account] was closed I sent information to my broker-dealer, but the bank account has since been closed.”⁴⁹

III. Conclusions of Law

A. Applicable Law

FINRA Rule 8210 authorizes FINRA staff, 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, or control.⁵⁰ 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.”⁵¹

Because FINRA lacks subpoena power, its ability to obtain information using Rule 8210 is “essential to FINRA’s ability to investigate possible misconduct by its members and

⁴³ Tr. (Day) 99.

⁴⁴ Tr. (Day) 112.

⁴⁵ Tr. (Day) 115.

⁴⁶ Tr. (Day) 115–16.

⁴⁷ Tr. (Day) 117–18.

⁴⁸ Tr. (Day) 128.

⁴⁹ Tr. (Day) 129.

⁵⁰ FINRA Rule 8210(a)(1), (2).

⁵¹ *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *54 n.46 (Sept. 24, 2015).

associated persons.”⁵² Consequently, an associated person’s failure to provide information in response to a FINRA Rule 8210 request “frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.”⁵³ By failing to timely produce requested information, an associated person violates FINRA Rule 8210.⁵⁴

When an associated person fails to comply with a FINRA Rule 8210 request, FINRA Rule 9552 authorizes FINRA staff to initiate an expedited process to suspend and potentially bar that person:

If a . . . person associated with a member . . . fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the FINRA By-Laws or FINRA rules . . . FINRA staff may provide written notice to such . . . 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.⁵⁵

An associated person served with this notice has until the effective date of the suspension to file a written request for a hearing with FINRA’s Office of Hearing Officers. The hearing request “must set forth with specificity any and all defenses to the FINRA action.”⁵⁶ A timely filed hearing request stays the effectiveness of the notice.⁵⁷

The evidence in this matter establishes that FINRA staff issued three requests to Day, each time seeking the same categories of information and documents, in accordance with FINRA Rule 8210. Day received each request and undisputedly failed to produce multiple categories of requested documents. The issue, then, is whether Day established a meritorious defense for his failure to respond to the requests. As explained below, we find that he did not.

⁵² *Mielke*, 2015 SEC LEXIS 3927, at *54; *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *23 (Nov. 8, 2007); *Dep’t of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *13–14 (NAC Feb. 18, 2016).

⁵³ *Dep’t of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *20 (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).

⁵⁴ *Dep’t of Enforcement v. Reifler*, No. 2016050924601, 2019 FINRA Discip. LEXIS 44, at *10 (NAC Sept. 30, 2019), *appeal docketed*, No. 3-19589 (SEC Oct. 10, 2019) (“A violation of FINRA Rule 8210 occurs when an associated person fails to provide full and prompt cooperation to FINRA in response to a request for information”).

⁵⁵ FINRA Rule 9552(a). The suspended person “may file a written request for termination of the suspension on the ground of full compliance with the notice or decision . . . [and] [t]he head of the appropriate department or office may grant relief for good cause shown.” FINRA Rule 9552(f). But if that person fails to do so “within three months of issuance of the original notice of suspension,” then the person will “automatically be . . . barred.” FINRA Rule 9552(h).

⁵⁶ FINRA Rule 9552(e).

⁵⁷ FINRA Rule 9559(c)(1).

B. Day Has No Defense to His Violation

Day asserted several defenses at the hearing. He first argued that his failure to respond to the requests should be excused because the bank records and statements sought by Enforcement included sensitive, “very private” financial information concerning his customers and activities unrelated to his work as an associated person. He testified that his activities had nothing to do with his work for Securities America and were irrelevant to any FINRA inquiry. He also claimed that he had no ability to obtain records from an old, closed bank account. Finally, he maintained that he produced bank records through his former employer, which he understood to satisfy his obligations.

As a threshold matter, Day failed to raise these defenses in his statement of defense. He raised only his generalized complaint that “this inquiry has caused an unnecessarily adverse effect on [his] clients.”⁵⁸ He raised his other defenses for the first time during the hearing. Those defenses are therefore waived.⁵⁹

And waiver aside, none of Day’s defenses have merit. First, Day’s privacy concerns are not a defense. The law is clear that “FINRA is not precluded from requesting confidential and private information, and the [Securities and Exchange Commission] has rejected assertions of privacy and confidentiality as justifiable reasons for failing to provide FINRA with that information.”⁶⁰ An associated person like Day cannot properly resist a request to produce even sensitive documents in a confidential, non-public FINRA investigation. He certainly cannot refuse to produce his own bank statements and records. Because “so much of the securities industry involves non-public information, allowing such abstract worries about privacy to overcome the critical role of Rule 8210 would eviscerate FINRA’s critical regulatory responsibilities.”⁶¹

Nor does Day’s claim that his outside business was unrelated to his work for Securities America excuse his obligations under Rule 8210.⁶² Recipients of Rule 8210 requests “may not refuse such requests on the grounds of relevance or otherwise set conditions on their compliance,

⁵⁸ Day never explains, nor is it clear to us, how an unspecified “adverse effect” on his clients as a result of the inquiry amounts to a defense to a claimed violation of FINRA Rule 8210.

⁵⁹ See *Dep’t of Enforcement v. Toomer*, No. FPI160009, 2016 FINRA Discip. LEXIS 46, at *18–19 (OHO Oct. 5, 2016) (precluding respondent from asserting defenses at the hearing and in written submissions that he did not raise in his hearing request).

⁶⁰ *North Woodward*, 2014 FINRA Discip. LEXIS 32, at *43, citing *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *36 (Apr. 17, 2014).

⁶¹ *Goldstein*, 2014 SEC LEXIS 1350, at *36.

⁶² *Id.* at *22 (affirming FINRA’s authority to request information related to an associated person’s outside consulting business); *CMG Inst’l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (rejecting applicant’s argument that information request was immaterial and “none of your business” by explaining that associated persons may not ignore information requests or determine for themselves their materiality).

and [FINRA] is not required to justify its information requests in order to obtain compliance from members and their associated persons.”⁶³

We also reject Day’s claim that he no longer possessed his old bank statements and records and was unable to obtain them from his former bank. Associated persons “have an obligation beyond a mere statement that information is unavailable. ‘If such a person cannot readily provide the information sought by [FINRA], such a person ha[s] an obligation to explain, as completely as possible, his efforts, and his inability to do so.’”⁶⁴ Day provided no explanation regarding any difficulty in obtaining his bank records until *after* he received a Notice of Suspension. He simply failed to produce the records. If Day did not personally possess his statements and records, he “had a responsibility to explain his efforts to obtain the documents that FINRA requested, and the obstacles, if any, [he] encountered while attempting to obtain those documents.”⁶⁵ He did not do so.

Day instead claimed that he belatedly tried to obtain his records by making two visits to the bank in the two months leading up to the hearing, and each time the bank branch was closed, presumably because of a pandemic-related shutdown. We do not credit Day’s unsubstantiated and unexplained claim that he was for some reason precluded from obtaining his bank records because he could not walk into a physical bank branch. And given that Day’s responses were originally due in early November 2019—more than seven months before the hearing and well before any shutdown—Day’s contentions are simply no defense to his violation.

We finally reject Day’s contention that he complied with his obligations under Rule 8210 by providing bank statements and records to his former employer, Securities America. Day acknowledged that he produced no records to his former employer after he departed the firm. And it was his departure, and the firm’s subsequent filing of a Form U5, that initiated the investigation. Day could not reasonably be under any impression that he was supposed to “go through his employer” to respond to Enforcement’s request when he was no longer employed with Securities America. And more significantly, Day “is responsible for responding *directly* to the [FINRA] requests for information’ and ‘[cannot] abdicate his duty by relying on others . . . to perform it.’”⁶⁶

In sum, we reject Day’s defenses and conclude that he violated FINRA Rule 8210 by not producing the information and documents sought by FINRA staff.

⁶³ *Fawcett*, 2007 SEC LEXIS 2598, at *18–19.

⁶⁴ *North Woodward*, 2015 SEC LEXIS 1867, at *21 & n.14 (citing *CMG Inst’l Trading*, 2009 SEC LEXIS 215, at *23–24).

⁶⁵ *Dep’t of Enforcement v. Ballard*, No. 2010025181001, 2015 FINRA Discip. LEXIS 52, at *25 (NAC Dec. 17, 2015).

⁶⁶ *Dep’t of Enforcement v. Eplboim*, No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *22 (NAC May 14, 2014), quoting *Michael David Borth*, 51 S.E.C. 178, 181 (1992).

IV. Sanctions

We have broad discretion to fashion an appropriate sanction in this expedited proceeding. FINRA Rule 9559 provides that the Hearing Panel “may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and . . . may also impose any other fitting sanction,”⁶⁷ as well as costs.⁶⁸

In determining an appropriate sanction, we begin by considering both the nature of this proceeding and the facts and circumstances of this case. As the National Adjudicatory Council explained, “Expedited proceedings under FINRA Rule 9552 generally involve straightforward issues and limited defenses. The streamlined procedures and specified, shortened timeframe under the rules support the swift resolution of these matters.”⁶⁹ Enforcement first issued a Rule 8210 request to Day more than eight months ago. Yet, Day stonewalled repeated requests for straightforward bank information, blocking Enforcement’s investigation. “Despite the well settled jurisprudence that respondents must fully and promptly cooperate with FINRA and cannot second guess FINRA information requests, [Day] made no meaningful attempt to comply with” multiple requests for the information.⁷⁰ The only substantive information provided by Day came in the narrative produced *after* he received his Notice of Suspension. And even Day’s narrative proved inaccurate and unreliable.

Further, we find significant Day’s testimony at the hearing that even if given another opportunity to respond, he would not do so. Day testified that even if he obtained the relevant bank records, “there are things within these records that I don’t think should be public information, and I consider that stuff very private.”⁷¹ Day’s obstinate refusal to provide straightforward financial information like his own bank records and statements is unacceptable and could thwart FINRA’s ability to fulfill its regulatory responsibilities.

We consider the Sanction Guidelines for failure to respond to FINRA Rule 8210 requests for information. They recommend that if an individual did not respond in any manner, a bar in all capacities should be standard and a fine of \$25,000 to \$73,000 should be imposed.⁷² For a partial but incomplete response, a bar is also standard unless the response substantially complied with all aspects of the request.⁷³ And because providing false and misleading responses to requests for information is just as serious as failing to respond in any manner, in the absence of mitigating

⁶⁷ FINRA Rule 9559(n)(1).

⁶⁸ FINRA Rule 9559(n)(4).

⁶⁹ *Lundgren*, 2016 FINRA Discip. LEXIS 2, at *26 (citing Notice of Filing of Proposed Rule Change, Exchange Act Release No. 48887, 2003 SEC LEXIS 2919, at *16 (Dec. 5, 2003), *adopted by* Order Approving Proposed Rule Change, Exchange Act Release No. 49380, 2004 SEC LEXIS 552 (Mar. 9, 2004)).

⁷⁰ *Id.* at *27.

⁷¹ Tr. (Day) 115–16.

⁷² FINRA Sanction Guidelines at 33 (2019), <http://www.finra.org/sanctionguidelines>.

⁷³ *Id.*

factors a bar is also standard.⁷⁴ The Guidelines direct adjudicators to consider, from FINRA’s perspective, the importance of the information requested.⁷⁵

Again, Day completely failed to respond in any manner to requests for basic financial records. He failed to produce checks, receipts, or wire instructions. He also completely failed to produce his monthly bank statements for the relevant periods. Regarding Enforcement’s request for other documents related to his fees, Day provided only vague narratives. Day’s only substantive narrative was his tardily submitted description of client fees that contained incomplete, inaccurate and misleading fee information.

Further, Enforcement established that the requested information and documents were important. Enforcement sought to determine whether Day was engaging in outside business; the magnitude and extent of his outside work; whether customers of his broker-dealer were led to believe the outside work related to the broker-dealer; and whether the outside business was adequately disclosed.⁷⁶ Day’s refusal to produce records related to his activities frustrated Enforcement’s ability to adequately answer each of these questions and learn all relevant facts and circumstances regarding the subject matter of its investigation.

Day suggests that his good work in “financial education,” along with his other industry and non-industry related work assisting and aiding his clients, should be considered as a mitigating factor.⁷⁷ But a respondent’s otherwise “unblemished” career or accomplishments are not mitigating, “because an associated person should not be rewarded for acting in accordance with his duties as a securities professional.”⁷⁸ We find no mitigating factors.

* * *

After carefully considering the nature of this proceeding, the facts and circumstances presented here, and the Guidelines, we find that the appropriate sanction is to bar Day from

⁷⁴ See, e.g., *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *32–33 (Aug. 22, 2008) (citing *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005) (“[T]he failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry . . . [A] bar is an appropriate remedy.”), *aff’d*, 444 F.3d 1208 (10th Cir. 2006)); *Dep’t of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *31 (NAC Mar. 9, 2015) (“The failure to respond truthfully to a FINRA Rule 8210 request is as serious and harmful as a complete failure to respond, and comparable sanctions are appropriate.”).

⁷⁵ Guidelines at 33 (Principal Consideration No. 1).

⁷⁶ Each of these questions bear on the fact of a FINRA Rule 3270 violation, or the appropriate sanction where a violation is found. See FINRA Rule 3270; Guidelines at 13.

⁷⁷ Tr. (Day) 104–05; 111; 124–25.

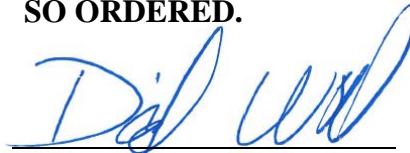
⁷⁸ *Dep’t of Enforcement v. Craig*, No. E8A2004095901, 2007 FINRA Discip. LEXIS 16, at *24 (NAC Dec. 27, 2007), *aff’d*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844 (Dec. 22, 2008); *Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, at * 25 (Feb. 24, 2012) (noting that respondent's 32-year industry career with an unblemished record was not mitigating).

associating with any FINRA member firm in any capacity and to order him to pay the hearing costs.⁷⁹

V. Order

Respondent Roderick Kenneth Day is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents, in violation of FINRA Rule 8210. Pursuant to Rule 9559(n)(4), Respondent is also ordered to pay hearing costs of \$2,026.14, which includes a \$750 administrative fee and the cost of the hearing transcript. The bar shall take effect as of the date of this Decision. The costs shall be due and payable on a date set by FINRA but not sooner than 30 days after the date of this Decision.⁸⁰

SO ORDERED.



David Williams
Hearing Officer
For the Hearing Panel

Copies to:

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⁷⁹ Considering the bar, we decline to impose monetary sanctions. Guidelines at 10 (“Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.”).

⁸⁰ The Hearing Panel considered and rejected without discussion all other arguments of the parties.