

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAMIAN M. BAIRD
(CRD No. 3097243),

Respondent.

Disciplinary Proceeding
No. 2023077669201

Hearing Officer–DRS

AMENDED DEFAULT DECISION¹

January 31, 2024

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents and failing to appear for on-the-record testimony FINRA requested in connection with two investigations.

Appearances

For the Complainant: John M. Fallon, Esq., Elissa M. Kestin, Esq., and Jennifer L. Crawford, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a two-cause Complaint against Respondent Damian M. Baird, a former registered representative, alleging that he failed to provide information and documents, and failed to appear for on-the-record testimony FINRA requested under FINRA Rule 8210 as part of two separate FINRA investigations into his conduct. As a result, the Complaint alleged, Baird violated FINRA Rules 8210 and 2010. When Baird failed to answer the Complaint, I ordered Enforcement to file a motion for entry of default decision. On December 21, 2023, Enforcement filed its motion (“Default Motion”), supported by a declaration from one of Enforcement’s attorneys in the case, John Fallon, Esq. (“Fallon Decl.”), and 12 exhibits (CX-1

¹ This Amended Decision is issued to correct a typographical error in the original decision.

through CX-12). Baird did not respond to the Default Motion. On January 8, 2024, Enforcement filed a supplemental affidavit from Fallon in support of the Default Motion (“Fallon Supp. Decl.”).

For the reasons set forth below, I find Baird in default, grant Enforcement’s Default Motion, and issue this decision barring Baird in all capacities from associating with any FINRA member firm.

II. Findings of Fact and Conclusions of Law

A. Baird’s Background

Baird first registered with FINRA in July 1998 as an Investment Company and Variable Contracts Products Representative.² From November 16, 2018 to May 22, 2020, he was registered with FINRA through an association with Morgan Stanley.³ And from June 5, 2020, to February 27, 2023, he was registered with FINRA through an association with Moors & Cabot, Inc.⁴ On February 27, 2023, Moors & Cabot filed a Form U5 (Uniform Termination Notice for Securities Industry Registration) disclosing that Baird voluntarily resigned from the firm on February 24, 2023.⁵ Baird has not been registered or associated with any FINRA member since February 27, 2023.⁶

The next month, on March 20, 2023, Moors & Cabot filed an amendment to Baird’s Form U5 (“March U5 Amendment”) disclosing a customer complaint it received on March 1, 2023.⁷ The March U5 Amendment stated that two of Baird’s customers (a married couple) “wrote a check for \$50,000 . . . for deposit” into their account serviced by Baird, and the “[b]ank’s fraud department [had] contacted [them] with concerns that the check which was presented for payment on February 24, 2023[,] may have been altered and was made payable to Damian Baird.”⁸

B. FINRA’s Jurisdiction

Although Baird is not registered or associated with any FINRA member, FINRA retains jurisdiction over him under Article V, Section 4(a) of FINRA’s By-Laws because (i) Enforcement filed the Complaint on September 29, 2023,⁹ within two years after February 27,

² Complaint (“Compl.”). ¶ 2; Fallon Decl. ¶ 7; CX-1, at 10.

³ Compl. ¶ 2; Fallon Decl. ¶ 7; CX-1, at 3–4.

⁴ Compl. ¶ 2; Fallon Decl. ¶ 7; CX-1, at 3–4.

⁵ Compl. ¶ 3; Fallon Decl. ¶ 7; CX-1, at 2.

⁶ Fallon Decl. ¶ 8; CX-1, at 3.

⁷ Compl. ¶ 4; Fallon Decl. ¶ 6; CX-3.

⁸ Compl. ¶ 5; Fallon Decl. ¶ 6; CX-3, at 6.

⁹ Fallon Decl. ¶ 9; CX-7.

2023, the effective date of termination of his registration with Moor & Cabot; and (ii) the Complaint charges him with failing to respond to FINRA’s requests for information and documents and for failing to appear for on-the-record testimony during the two-year period after the date he ceased to be registered or associated with a FINRA member.¹⁰

C. Origin of the Proceeding

This proceeding stemmed from two separate FINRA investigations initiated in January and March 2023.¹¹ The first investigation focused on whether Baird failed to comply with his discovery obligations in a FINRA arbitration in which he was named as a respondent (“First Investigation”).¹² In that arbitration, the adjudicators levied a fine against him for failing to comply with a discovery order.¹³ FINRA opened a second investigation to examine allegations against Baird in the March U5 Amendment (“Second Investigation”).¹⁴ Baird’s failure to respond to FINRA’s information, document, and testimony requests issued in connection with these two investigations led to this disciplinary proceeding.

D. Baird’s Default

Under FINRA Rules 9131(b) and 9134(a)(2) and (b)(1), a Complaint may be served on a natural person by U.S. Postal Service (“USPS”) via first class certified mail at the person’s residential address, as reflected in the Central Registration Depository (“CRD”). But if the serving party has actual knowledge that the person’s CRD address is outdated, then the serving party must serve duplicate copies at that person’s last known residential address and the business address in the CRD of the entity with which that person is employed or affiliated.

On September 29, 2023, Enforcement served Baird with the Complaint and Notice of Complaint by sending them via USPS first-class certified mail to Baird’s last known residential address as reflected in CRD (“CRD Address”).¹⁵ The Notice of Complaint stated that Baird was required to answer the Complaint by October 27, 2023,¹⁶ but he did not do so. When Baird failed to answer the Complaint, on October 30, 2023, Enforcement served Baird with the Complaint and Second Notice of Complaint by sending them via USPS first-class certified mail to the CRD

¹⁰ Compl. ¶ 6; Fallon Decl. ¶ 10.

¹¹ Fallon Decl. ¶ 4.

¹² Compl. ¶¶ 7, 9; Fallon Decl. ¶ 5.

¹³ Compl. ¶ 8; Fallon Decl. ¶ 5; CX-4; CX-5.

¹⁴ Compl. ¶ 21; Fallon Decl. ¶ 6.

¹⁵ Fallon Decl. ¶¶ 11, 13; CX-7, at 1.

¹⁶ Fallon Decl. ¶ 19; CX-7, at 2.

Address.¹⁷ The Second Notice of Complaint informed Baird that he was required to answer the Complaint by November 16, 2023.¹⁸ To date, Baird has not answered the Complaint.

Enforcement represents that at the time it served the Complaint and Notices of Complaint on Baird, it did not have actual knowledge that the CRD address was out of date or inaccurate.¹⁹ But as discussed below, at some point—it is unclear when—Enforcement learned that the CRD address may have been out of date or inaccurate. According to the USPS’s online tracking portal, the USPS found the CRD Address vacant when it attempted to deliver two FINRA Rule 8210 requests for documents and information and one FINRA Rule 8210 request for investigative testimony to Baird at that address.²⁰ In any event, because Baird was no longer associated with a member firm at the time Enforcement served the Complaint, the provision requiring service of a duplicate copy of the Complaint and Notices of Complaint at his business address was inapplicable. Additionally, at the time it served the Complaint and Notices of Complaint, Enforcement did not have a more current or alternative address for Baird.²¹ Accordingly, Enforcement served the Complaint and the First and Second Notices of Complaint in accordance with applicable FINRA rules.²²

Because Baird has not answered, or otherwise responded to, the Complaint, I find that he defaulted.²³ As a result, I deem the allegations in the Complaint admitted under FINRA Rules 9215(f) and 9269(a)(2).

E. Baird Failed to Respond to Requests for Information and Documents (First Cause of Action)

1. Requests for Information and Documents in Connection with the First Investigation

On March 22, 2023, in connection with the First Investigation, FINRA requested, under FINRA Rule 8210, that Baird provide documents and information about, in particular, issues relating to his compliance with his discovery obligations in a FINRA arbitration in which he was

¹⁷ Fallon Decl. ¶ 21; CX-10, at 1.

¹⁸ Fallon Decl. ¶ 28; CX-10, at 1.

¹⁹ Fallon Decl. ¶¶ 12, 22.

²⁰ Recently, on January 3, 2024, a first-class mailing of the Notice of Complaint and Complaint sent to Baird’s CRD Address was returned to Enforcement with a written notation on the envelope that the recipient “no longer lives at this address.” Fallon Suppl. Decl. 1; CX-13, at 1.

²¹ Fallon Decl. ¶¶ 12, 22.

²² Fallon Decl. ¶¶ 15, 24.

²³ Baird is notified that he may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

named as a respondent (“March 22 Request”).²⁴ FINRA requested a response by April 6, 2023.²⁵ FINRA served the March 22 Request by certified mail and first-class mail to the CRD Address.²⁶ Baird did not provide any information or documents by the deadline, nor did he request an extension of that deadline.²⁷

When Baird failed to respond to the March 22 Request, FINRA sent him a second request under FINRA Rule 8210 on April 10, 2023 (“April 10 Second Request”).²⁸ The April 10 Second Request sought the same documents and information as the March 22 Request²⁹ and requested a response by May 1, 2023.³⁰ FINRA served the April 10 Second Request by certified mail and first-class mail to the CRD Address.³¹ According to the USPS’s online tracking portal, the USPS attempted to deliver the certified mailing of the April 10 Second Request at the CRD Address but found that address “vacant” on April 13, 2023.³² Baird did not provide any information or documents by the due date, nor did he request an extension of the deadline.³³

2. Requests for Information and Documents in Connection with the Second Investigation

On March 23, 2023, in connection with the Second Investigation, FINRA requested, under FINRA Rule 8210, that Baird provide documents and information relating to, among other things, account statements for his bank and brokerage accounts, and any alterations he may have made to a check made by the complaining customers (“March 23 Request”).³⁴ FINRA requested a response by April 7, 2023.³⁵ FINRA served the March 23 Request by certified mail and first-class mail to the CRD Address.³⁶ Baird did not provide any information or documents in response to the March 23 Request by the deadline, nor did he request an extension of the deadline.³⁷

²⁴ Compl. ¶ 10.

²⁵ Compl. ¶ 10.

²⁶ Compl. ¶ 11.

²⁷ Compl. ¶ 15.

²⁸ Compl. ¶ 16.

²⁹ Compl. ¶ 16.

³⁰ Compl. ¶ 16.

³¹ Compl. ¶ 17.

³² Compl. ¶ 18.

³³ Compl. ¶ 20.

³⁴ Compl. ¶ 22.

³⁵ Compl. ¶ 22.

³⁶ Compl. ¶ 23.

³⁷ Compl. ¶ 26.

Because Baird did not respond to the March 23 Request, FINRA sent him a follow-up request, under FINRA Rule 8210, on April 10, 2023, seeking the same documents and information requested in the March 23 Request (“April 10 Follow-up Request”).³⁸ FINRA requested a response by May 1, 2023.³⁹ FINRA served the April 10 Follow-up Request by certified mail and first-class mail to the CRD Address.⁴⁰ According to the USPS’s online tracking portal, the USPS attempted to deliver the certified mailing of the April 10 Follow-up Request to the CRD Address but found that address “vacant” on April 13, 2023.⁴¹ Baird did not provide any information or documents by the deadline, nor did he request an extension of the deadline.⁴²

F. Baird Failed to Respond to Requests to Appear and Provide Testimony (Second Cause of Action)

On March 23, 2023, in connection with the Second Investigation, FINRA requested, under FINRA Rule 8210, that Baird appear for on-the-record testimony (“OTR”) by videoconference at 9:30 a.m. Eastern Time on April 17, 2023 (“First OTR Request”).⁴³ FINRA served the First OTR Request by certified mail and first-class mail to the CRD Address.⁴⁴ Baird did not appear for testimony on April 17, 2023, nor did he request an adjournment of his testimony.⁴⁵

So the next day, April 18, FINRA sent him a second request for his OTR (“Second OTR Request”) under FINRA Rule 8210.⁴⁶ The Second OTR request directed Baird to appear for an OTR by videoconference at 9:30 a.m. Eastern Time on May 1, 2023.⁴⁷ FINRA served the Second OTR Request by certified mail and first-class mail to the CRD Address.⁴⁸ According to the USPS’s online tracking portal, the USPS attempted to deliver the certified mailing of the Second

³⁸ Compl. ¶ 27.

³⁹ Compl. ¶ 27.

⁴⁰ Compl. ¶ 28.

⁴¹ Compl. ¶ 29.

⁴² Compl. ¶ 31.

⁴³ Compl. ¶ 32.

⁴⁴ Compl. ¶ 33.

⁴⁵ Compl. ¶ 36.

⁴⁶ Compl. ¶ 37.

⁴⁷ Compl. ¶ 37.

⁴⁸ Compl. ¶ 38.

OTR Request at the CRD Address but found that address “vacant” on April 21, 2023.⁴⁹ Baird did not appear for testimony on May 1, 2023, nor did he request an adjournment of his testimony.⁵⁰

G. Baird Violated FINRA Rules 8210 and 2010 by Failing to Respond to Information and Document Requests and Appear and Provide Testimony

Enforcement charged Baird with violating FINRA Rules 8210 and 2010 by failing to respond to information and document requests and to appear and provide testimony as requested under FINRA Rule 8210 in connection with an investigation. FINRA Rule 8210(a)(1) provides that FINRA staff may “require a . . . person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in [an] investigation.” That provision also authorizes FINRA to “require a . . . person subject to FINRA’s jurisdiction . . . to testify at a location specified by FINRA staff . . . with respect to any matter involved in [an] investigation, complaint, examination, or proceeding[.]”

FINRA Rule 8210(a)(2) provides that FINRA staff may “inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member’s or person’s possession, custody or control.” FINRA Rule 8210(c) provides that “[n]o member or person shall fail to provide information or testimony pursuant to this Rule.” A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010, which requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.⁵¹

Constructive notice of a request, not actual notice of it, “is all that FINRA Rule 8210 demands.”⁵² Under the Rule’s constructive service provision, FINRA Rule 8210(d), a formerly registered person is deemed to have received a FINRA Rule 8210 request if it was mailed or otherwise transmitted to their “last known residential address . . . as reflected in [CRD].”⁵³ But if the FINRA staff responsible for mailing or otherwise transmitting the request actually knows that the address in CRD is out dated or inaccurate and knows of another more current address, then it must also mail or otherwise transmit a copy of the request to that other address.⁵⁴

⁴⁹ Compl. ¶ 39.

⁵⁰ Compl. ¶ 39.

⁵¹ *Dep’t of Enforcement v. Felix*, No. 2020065128501, 2022 FINRA Discip. LEXIS 13, at *15 n.18 (NAC Oct. 13, 2022), *appeal docketed*, No. 3-21246 (SEC Nov. 15, 2022) (citing *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 n.36 (Jan. 30, 2009)).

⁵² *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *36 (NAC June. 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

⁵³ FINRA Rule 8210(d).

⁵⁴ FINRA Rule 8210(d).

FINRA’s service of the requests complied with FINRA Rule 8210(d). FINRA staff mailed each request to the CRD Address. According to the Complaint, at all relevant times, FINRA staff had no actual knowledge that the CRD Address was out of date or inaccurate.⁵⁵ Further, the Complaint alleges that in March 2023 and again in July 2023, FINRA staff confirmed through Lexis and CLEAR searches that the CRD Address was current and that no alternate address was listed as current.⁵⁶ While at some point FINRA learned from the USPS that the CRD Address was vacant, FINRA nevertheless served the requests properly because it lacked knowledge of another more current address for him. Thus, I find that Baird had constructive notice of the requests.⁵⁷ By failing to respond to the requests for information and documents, and by failing to appear for testimony as requested, Baird violated FINRA Rules 8210 and 2010.

III. Sanctions

Under FINRA’s Sanction Guidelines (“Guidelines”), if an individual did not respond in any manner to a request made under FINRA Rule 8210, a bar is standard.⁵⁸ The Guidelines also recommend a fine of \$10,000 to \$50,000.⁵⁹ The sole principal consideration in determining sanctions for failing to respond is “[t]he importance of the information requested as viewed from FINRA’s perspective.”⁶⁰

The March 22 and 23 Requests sought documents and information that were material to FINRA’s investigations in two separate matters.⁶¹ Enforcement states that the requested documents and information were relevant to determining, among other things, whether Baird violated FINRA Rules concerning discovery in FINRA arbitrations and, separately, whether he altered a customer check and attempted to convert customer funds.⁶² Additionally, Enforcement represents that Baird’s testimony was material to FINRA’s investigation into whether he altered a customer check and attempted to convert customer funds.⁶³ According to Enforcement, Baird’s failure to provide the requested documents and information and to appear and provide testimony impeded FINRA’s investigations.⁶⁴ Based on these representations, I find that the importance of the information requested is an aggravating factor here. I also considered whether the record

⁵⁵ Compl. ¶ 42.

⁵⁶ Compl. ¶ 42.

⁵⁷ *Felix*, 2022 FINRA Discip. LEXIS 13, at *16 (“Because FINRA properly served the FINRA Rule 8210 requests, Felix is deemed to have received them. *See* FINRA Rule 8210(d).”).

⁵⁸ Guidelines at 93 (2022) https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Compl. ¶ 49.

⁶² Compl. ¶ 49; Fallon Decl. ¶ 32.

⁶³ Compl. ¶ 56; Fallon Decl. ¶ 32.

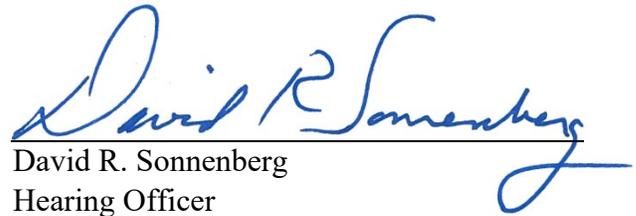
⁶⁴ Compl. ¶¶ 49, 56; Fallon Decl. ¶ 32.

reflected any mitigation relevant to sanctions. Enforcement states that it is not aware of any mitigation,⁶⁵ and I find none.

Accordingly, Baird is barred from associating with any FINRA member firm in any capacity. The Guidelines state that, in certain instances, it may be appropriate to aggregate violations for purposes of imposing sanctions.⁶⁶ I impose a unitary sanction for the misconduct alleged in the first and second causes of action because they both relate to Baird's failure to respond to FINRA Rule 8210 requests. But, in light of the bar, I do not also impose a fine.⁶⁷

IV. Order

The Default Motion is **GRANTED**. For violating FINRA Rules 8210 and 2010 by failing to respond to information and document requests and to appear for and provide on-the-record testimony as required by FINRA Rule 8210, Baird is barred from associating with any FINRA member firm in any capacity. The bar shall be effective immediately if this decision becomes FINRA's final action.


David R. Sonnenberg
Hearing Officer

Copies to:

Damian M. Baird (via first-class mail, overnight courier, and email)
John M. Fallon, Esq. (via email)
Elissa M. Kestin, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

⁶⁵ Fallon Decl. ¶ 30.

⁶⁶ Guidelines at 4 (“The range of monetary sanctions in each case may be applied in the aggregate for similar types of violations rather than per individual violation.”); *see also Dep’t of Enforcement v. Fox & Co. Invs., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at *37 (NAC Feb. 24, 2005), *aff’d*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822 (Oct.28, 2005) (explaining that when “multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate.”).

⁶⁷ Guidelines at 9 (Technical Matters) (“Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.”). The record did not reflect customer loss.