

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ADAM GERARD BELARDINO
(CRD No. 5221927),

Respondent.

Disciplinary Proceeding
No. 2019062347102

Hearing Officer–MC

DEFAULT DECISION

September 7, 2021

**For failing to provide on-the-record testimony on two occasions in violation of
FINRA Rules 8210 and 2010, Respondent Adam Gerard Belardino is barred
from associating with any FINRA member firm in any capacity.**

Appearances

For the Complainant: Loyd Gattis, Esq., Brody Weichbrodt, Esq., and Maya Krugman, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

In April 2019, Respondent Adam Gerard Belardino’s firm terminated his employment during a review of customer complaints made against him. After learning of the termination, FINRA initiated an investigation into the surrounding circumstances. FINRA staff started by sending Belardino a request pursuant to FINRA Rule 8210 for information about the customer complaints. Through his attorney, Belardino provided only a partial response. The staff then served Belardino with a second Rule 8210 request, this one directing Belardino to provide on-the-record (“OTR”) testimony by videoconference. FINRA staff scheduled the interview on a day Belardino’s attorney said he was available. But two days before the interview, the attorney submitted a letter to the staff stating that, for medical reasons, Belardino was unable to attend. The staff agreed to postpone the interview and notified Belardino’s attorney of the new date. Belardino did not appear to provide his testimony. The staff sent another letter to Belardino’s attorney, pursuant to Rule 8210, to reschedule the interview. Once again, Belardino failed to appear.

The Department of Enforcement filed a Complaint charging Belardino with violating FINRA Rules 8210 and 2010 for his two failures to appear and provide OTR testimony. Enforcement served the Complaint and Notice of Complaint on him twice. Belardino did not file an Answer or respond in any way. Consequently, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), accompanied by the Declaration of Brody W. Weichbrodt (“Weichbrodt Decl.”), supported by Enforcement’s exhibits. Belardino did not respond to the Default Motion. Therefore, as explained below, I find Belardino in default, deem the allegations in the Complaint admitted, and grant the Default Motion. After considering the facts, Enforcement’s recommendations, and applying FINRA’s Sanction Guidelines, I find it appropriate to bar Belardino from associating with any FINRA member firm in any capacity.

II. Findings of Fact and Conclusions of Law

A. Respondent’s Background and FINRA’s Jurisdiction

Belardino first registered with FINRA in 2007. From March 25, 2017, to April 16, 2019, he was registered with FINRA as a general securities representative, employed by MML Investors Services, LLC (“MML”).¹ MML filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) on April 16, 2019,² and five Form U5 amendments thereafter, the last on March 9, 2021.³ Belardino is no longer registered with FINRA or associated with any FINRA member firm. Nonetheless, FINRA retains jurisdiction over him for the purposes of this proceeding because (1) Enforcement issued the Complaint within two years after MML filed the final Form U5 amendment to Belardino’s original notice of termination; and (2) the rule violations charged in the Complaint occurred within two years of the filing of the last amendment to his Form U5.⁴

B. Origin of the Investigation

MML’s April 2019 Form U5 filing explained that the firm terminated Belardino “in connection with” customer complaints the firm was reviewing. The customer complaints included allegations that Belardino had misrepresented account values, traded excessively, and did not liquidate accounts as requested by his customers.⁵ The Form U5 filing prompted FINRA’s investigation.⁶

¹ Complaint (“Compl.”) ¶ 2.

² Compl. ¶ 3.

³ Compl. ¶ 5.

⁴ Compl. ¶ 6; FINRA’s By-Laws, Article V, Section 4.

⁵ Compl. ¶ 3.

⁶ Compl. ¶ 7; Weichbrodt Decl. ¶ 4.

C. The Default

On May 12, 2021, Enforcement properly served Belardino with the Complaint and Notice of Complaint in accordance with FINRA Rules 9131 and 9134. It sent the documents to Belardino's residential address as reflected in the Central Registration Depository ("CRD"), and to another address FINRA staff found in an online search.⁷ The United States Postal Service confirmed delivery of the certified mailings and neither of the first-class mailings was returned.⁸ The deadline for Belardino to file an Answer was June 9, 2021. Belardino did not file an Answer.⁹

On June 10, 2021, Enforcement again properly served Belardino with the Complaint, sending it and the Second Notice of Complaint to the same addresses by certified and first-class mail. As before, the Postal Service confirmed delivery of the certified mailings, and the first-class mailings were not returned. The Second Notice of Complaint informed Belardino that if he did not file an Answer by June 28, 2021, the allegations in the Complaint could be deemed admitted and a default decision could be entered against him, imposing sanctions with no further notice. Belardino did not file an Answer.¹⁰

By its service of the Complaint and the First and Second Notices of Complaint, Enforcement complied with FINRA Rules 9131(b) and 9134(b), governing the service of complaints. Because Belardino failed to file an Answer, he defaulted.¹¹

D. The Rule 8210 Requests for Information and Testimony

After terminating Belardino's employment, MML filed five amendments to his Form U5 describing additional complaints customers made against him. The final amendment, filed on March 9, 2021, contained an allegation that Belardino sold a customer unsuitable investments in real estate investment trusts.¹²

During its investigation, on July 23, 2019, FINRA issued its first Rule 8210 request to Belardino. It directed him to provide a signed statement describing the circumstances of his termination. It also directed him to respond to the allegations made by four customers, disclose any other complaints against him, and provide copies of documents relating to the allegations.¹³ Through his counsel, Belardino responded to the request, but only partially. He claimed that he

⁷ Weichbrodt Decl. ¶ 17.

⁸ *Id.* ¶¶ 21-23.

⁹ *Id.* ¶¶ 24-25.

¹⁰ *Id.* ¶¶ 26, 30-35.

¹¹ By making a showing of good cause, Belardino may move to set aside the default pursuant to FINRA Rule 9269(c).

¹² Compl. ¶ 5.

¹³ Compl. ¶¶ 7- 8.

could not respond to three of the four customer complaints because he did not have access to the relevant documents.¹⁴

Given this reply, FINRA decided to conduct an OTR interview to present Belardino with the relevant documents so he could fully respond to the customer allegations.¹⁵ Belardino's counsel agreed that his client would be available on either October 12 or 14, 2020. The staff served the attorney with a Rule 8210 request for Belardino to testify by videoconference on October 14.¹⁶ On October 8, Belardino and his lawyer participated in a Zoom videoconference to familiarize themselves with the technology in preparation for the OTR interview.¹⁷ However, on October 12, just two days before the scheduled interview, Belardino's attorney delivered a letter to the staff announcing that Belardino needed to postpone the interview for ninety days because of medical problems that dated back to June 2020. The lawyer attached a letter from Belardino's treating professional. On October 13, the staff sent an email to the attorney confirming a discussion in which the staff agreed to "wait and see where we are at the end of two weeks," and if it decided to proceed with the OTR interview, it would be postponed no longer than thirty days.¹⁸

FINRA heard nothing more from Belardino.¹⁹ On October 29, 2020, the staff sent Belardino another Rule 8210 request, this time scheduling the interview on November 12. FINRA offered to take Belardino's testimony over two days as an accommodation to any medical needs. The staff sent the request by certified mail and email; Belardino's lawyer received it on November 2, 2020.²⁰

The staff tried to contact Belardino's lawyer on November 10, 2020, to ask if Belardino was going to appear, but the lawyer did not respond to the inquiry. Belardino did not appear for the scheduled OTR interview on November 12.²¹ On November 18, the staff issued another Rule 8210 letter rescheduling the OTR testimony for December 7, 2020. Belardino's counsel received it on November 23, 2020.²² The staff sent Belardino's lawyer an email on November 30 asking if

¹⁴ Compl. ¶ 9.

¹⁵ Compl. ¶ 10.

¹⁶ Compl. ¶¶ 11-12.

¹⁷ Compl. ¶ 14; Complainant's Exhibit ("CX-") 6, at 2.

¹⁸ Compl. ¶ 16; Weichbrodt Decl. ¶ 6; CX-8.

¹⁹ Compl. ¶ 17.

²⁰ Compl. ¶¶ 18-19; CX-9; CX-11.

²¹ Compl. ¶¶ 20-22.

²² Compl. ¶¶ 23-24.

Belardino was going to appear for the interview; there was no reply. Belardino did not join the videoconference for the OTR interview.²³

The staff issued a Notice of Suspension on December 23, 2020 informing Belardino that on January 19, 2021 he would be suspended from associating with any FINRA member in any capacity for his failures to provide OTR testimony.²⁴ On January 15, Belardino filed a request with the Office of Hearing Officers for a hearing on the Notice of Suspension. Then, on February 15, he withdrew the request; the next day, the Hearing Officer issued an order that the Notice of Suspension was final.²⁵

E. Belardino’s Violations of FINRA Rules 8210 and 2010

Rule 8210(a)(1) authorizes FINRA staff conducting an investigation to require an associated person to testify under oath about “any matter involved in the investigation.” Rule 8210(c) emphasizes the importance of complying with a request to testify by stating unequivocally that “[n]o member or person shall fail to provide information or testimony.” Thus, Belardino “had a duty to appear and provide testimony as requested by FINRA staff.”²⁶

Belardino’s claim that a medical condition prevented him from testifying by videoconference did not relieve him of his obligation to comply with Rule 8210 requests.²⁷ Other than one letter, Belardino provided no substantiating evidence of a medical condition that could excuse his failure to testify. To the contrary, he demonstrated that he could take part in a videoconference when, four days before the first scheduled interview, he and his attorney joined a Zoom videoconference to review the technical and procedural details in preparation for the OTR interview. Established precedent makes clear that if a personal or medical issue made him unable to provide testimony, Belardino should have discussed the issue with FINRA staff in a “cooperative spirit and prompt manner” consistent with FINRA rules.²⁸ Belardino did not do so; he did not suggest alternate dates or alternative means of complying with the staff’s requests.²⁹ The National Adjudicatory Council has established a high bar for proving that personal stress or a medical condition excuses violations of FINRA rules. When claiming to be medically unable to comply with a FINRA staff’s request for testimony, an associated person has the burden of proving that a significant physical or psychological condition interfered with the person’s ability

²³ Compl. ¶ 27.

²⁴ Compl. ¶ 28.

²⁵ Compl. ¶¶ 32-34.

²⁶ *Dep’t of Enforcement v. Jarkas*, No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *38 (NAC Oct. 5, 2015).

²⁷ *Jarkas*, 2015 FINRA Discip. LEXIS 50, at *40-41.

²⁸ *Dep’t of Enforcement v. Walblay*, No. 2011025643201, 2014 FINRA Discip. LEXIS 3, at *18 (NAC Feb. 25, 2014) (quoting *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *23-24 (Jan. 30, 2009)).

²⁹ *Walblay*, 2014 FINRA Discip. LEXIS 3, at *18-19.

to testify.³⁰ Belardino did not justify his failures to fulfill his obligation to testify. They were inexcusable and violated Rules 8210 and 2010, as charged in the Complaint's sole cause of action.

III. Sanctions

As Enforcement points out, "Rule 8210 'is at the heart of the self-regulatory system for the securities industry' and imposes an 'unequivocal' responsibility to comply with FINRA's Rule 8210 requests."³¹ FINRA's Sanction Guidelines make a bar the standard sanction when an individual fails to respond in any manner to a Rule 8210 request for information or testimony.³² Because Belardino provided a partial response to FINRA's initial Rule 8210 request for information, as Enforcement properly acknowledges, it is necessary to consider whether that partial response justifies imposing a less severe sanction.³³ Enforcement argues that it does not. Neither does Belardino's claim that a medical condition made him unable to appear and testify, Enforcement contends.

The Guidelines state that for a respondent who provides "a partial but incomplete response," a bar is the standard sanction "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."³⁴ Here, Belardino conceded the insufficiency of his response to the original Rule 8210 request when he claimed that he could not respond to three of the four customer complaints the staff was investigating because he did not have access to relevant documents. The inadequacy of his partial response prompted the staff to issue the Rule 8210 request scheduling an OTR videoconference interview. Clearly, therefore, Belardino did not "substantially" comply "with all aspects of the request" for information.

The Guidelines' relevant Principal Considerations in Determining Sanctions for providing a partial but incomplete response to a Rule 8210 request include three factors to weigh: (1) the importance, from FINRA's perspective, of the information sought but not provided and whether the information provided in the partial response was relevant and responsive to the request; (2) the number of requests and amount of time it took for respondent to respond, and the degree of difficulty in obtaining a response; and (3) whether a respondent has valid reasons for the deficiencies in a response.³⁵ Here, the information Belardino provided may have been relevant but was substantially incomplete, providing only a fraction of the information FINRA requested and needed to conduct its investigation. The scope and importance of the

³⁰ *Jarkas*, 2015 FINRA Discip. LEXIS 50, at *49-51.

³¹ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

³² FINRA Sanction Guidelines ("Guidelines") at 33 (Oct. 2020), <http://www.finra.org/sanctionguidelines>.

³³ *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *55-57 (June 14, 2013) (compliance with an 8210 request in the course of the same investigation in which a respondent fails to comply with subsequent Rule 8210 requests requires analysis of factors "other than the presumptive unfitness indicated by a failure to respond in any manner.").

³⁴ Guidelines at 33.

³⁵ *Id.*

information that Belardino failed to provide far exceeded what he gave in his partial response. Although Belardino, having been terminated by his firm, may have been unable to gain access to documents he needed to make a complete initial response, FINRA staff planned to show relevant documents to him at the OTR interview, to enable him to fully respond.

One of the Principal Considerations in Determining Sanctions is whether a respondent tried to delay an investigation or conceal information from FINRA.³⁶ The record shows that Belardino knew that FINRA staff scheduled the OTR interview to obtain further information about his customers' complaints and the termination of his employment with MML. Belardino's delivery of a letter just two days before the first scheduled OTR interview announcing that he could not participate forced a postponement and has the appearance of a last-minute delay tactic that suggests an intent to thwart FINRA's efforts to obtain the information it needed.

As noted by Enforcement, Rule 8210 is a critical tool for the efficacy of self-regulation in the securities industry. Because FINRA does not possess the power to issue subpoenas to obtain information when investigating, it must depend on Rule 8210 to do its job.³⁷ Refusals to comply with Rule 8210 requests for information or testimony are "serious violations because they subvert [FINRA's] ability to carry out its regulatory responsibilities."³⁸

By failing to provide OTR testimony on two occasions when required to do so by FINRA's Rule 8210 requests, Belardino violated Rule 8210 as well as his responsibility to "observe high standards of commercial honor and just and equitable principles of trade" required by Rule 2010. He frustrated FINRA's investigation into serious customer complaints of misconduct. For these reasons, and given the absence of mitigating factors, I agree with Enforcement's recommendation that a bar is required to protect the public by deterring him and others from refusing to respond to Rule 8210 requests under circumstances such as these.³⁹

³⁶ Guidelines at 8 (Principal Consideration No. 12).

³⁷ *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491, at *22 (Dec. 20, 2011).

³⁸ *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

³⁹ *Siegel v. SEC*, 592 F.3d 147, 158 (D.C. Cir. 2010) (noting that it is appropriate to consider deterrence as part of the remedial inquiry when determining sanctions).

IV. ORDER

Respondent Adam Gerard Belardino is barred from associating with any FINRA member firm in any capacity for failing to provide on-the-record testimony on two occasions in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Matthew Campbell
Hearing Officer

Copies to:

Adam Gerard Belardino (via email, overnight courier, and first-class mail)
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