

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRYCE PATRICK JENNEY
(CRD No. 6207379),

Respondent.

Disciplinary Proceeding

No. 2018060216701

Hearing Officer–DW

AMENDED DEFAULT DECISION¹

April 9, 2020

For failing to produce documents and twice failing to appear and provide on-the-record testimony during an investigation as required by FINRA Rule 8210, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

For the Complainant: Gina Petrocelli, Esq., Daniel Hibshoosh, Esq., and Robert Fair, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

Respondent Bryce Patrick Jenney (“Jenney”) was registered as a General Securities Representative until the FINRA member firm (“Firm”) that he associated with terminated his employment. On October 18, 2018, the Firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) disclosing that it terminated Jenney for “providing investment advice on a product not offered by the firm.” Since then, Jenney has not been associated with a FINRA member.

After the Firm filed the Form U5, FINRA’s Department of Enforcement (“Enforcement”) opened an investigation into the circumstances that led to Jenney’s termination. As part of that

¹ This decision is amended to correct Respondent’s CRD number in the caption.

investigation, Enforcement staff sent Jenney a request for the production of information and documents related to the allegation that he provided advice on securities outside his Firm. After receiving Jenney's two-page written statement denying the allegation, Enforcement sent a follow-up request on July 15, 2019 (the "July Request"). The July Request sought various financial records, along with further information on Jenney's relationship with two issuers, including the issuer mentioned in the Firm's Form U5 disclosure. Jenney's counsel advised Enforcement that Jenney received the request, but did not intend to respond. Jenney in fact did not respond to the request.

On September 12, 2019, Enforcement sent Jenney a request to appear for on-the-record ("OTR") testimony under FINRA Rule 8210. The day before his scheduled testimony, Jenney's attorney told Enforcement that Jenney would not appear. As promised, Jenney failed to appear for his testimony on October 16, 2019. That same day, the staff sent him another request for his testimony, this time on October 23, 2019. He failed to appear again.

Enforcement filed a one-cause Complaint on December 6, 2019, alleging that Jenney violated FINRA Rules 8210 and 2010, by failing to respond to the July Request and twice failing to appear and give his OTR testimony. Enforcement filed and served the Complaint, Notice of the Complaint, and a Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. To date, Jenney has not answered or otherwise challenged the charges against him.

Enforcement later filed and served a motion for entry of default decision under FINRA Rules 9215(f) and 9269, together with the Declaration of W. Robert Fair ("Declaration") in support of the motion, and supporting exhibits. Jenney did not respond to the motion.

For the reasons set forth below, I grant Enforcement's motion. Because Jenney failed to respond, he is in default. Through his default, Jenney admits the allegations of the Complaint as provided by FINRA Rule 9269(a)(2). Based on the facts pled in the Complaint and now admitted by Jenney, along with the sworn evidence provided by the Declaration, I find that Jenney committed the violations alleged in the Complaint. Accordingly, I impose sanctions consistent with FINRA's Sanction Guidelines.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Jenney entered the securities industry in 2012. He first became registered with FINRA in December 2015 as a General Securities Representative. He associated in that capacity with the Firm, a FINRA member, beginning in January 2018. The Firm terminated his employment on September 19, 2019, and filed a Form U5 disclosing the termination on October 18, 2019. The

Firm disclosed that it terminated Jenney for “providing investment advice on a product not available through the firm.”²

Jenney is not currently registered or associated with a FINRA member.³

B. FINRA’s Jurisdiction

FINRA has jurisdiction over Jenney in this matter under Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed its Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges Jenney with failing to respond to requests for information during the two-year period after the termination of his registration.⁴

C. Origin of the Investigation

FINRA started investigating Jenney shortly after the Firm filed the Form U5. The investigation concerned the allegation that Jenney provided investment advice on securities outside his Firm.⁵

D. Respondent’s Default

Enforcement served Jenney with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on December 6, 2019, and the Complaint and Second Notice of Complaint on January 6, 2020. In each case, Enforcement served Jenney by first-class and certified mail addressed to his last known residential address recorded in FINRA’s Central Registration Depository (“CRD”) and also electronically at his email address.⁶

Thus, Jenney received valid constructive notice of this proceeding.

Under Rule 9215, Jenney’s Answer was due by January 23, 2020. To date, Jenney has not filed an Answer to the Complaint and Second Notice of Complaint.⁷ Thus, Jenney is in default.⁸

E. Jenney Violated FINRA Rules 8210 and 2010 by Failing to Produce

² Complaint (“Compl.”) ¶¶ 2–3; Declaration (“Decl.”) ¶¶ 4–5, Decl. Exhibits (“CX”)-1, at 5.

³ Compl. ¶ 4; Decl. ¶ 6.

⁴ Compl. ¶ 4; Decl. ¶ 6.

⁵ Compl. ¶ 9, 10; Decl. ¶ 4.

⁶ Decl. ¶¶ 7–11; CX-3; CX-4.

⁷ Decl. ¶ 11.

⁸ Jenney may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

Documents and Provide Testimony.

The Complaint's sole cause of action alleges that Jenney violated FINRA Rules 8210 and 2010 by failing to comply with a request for production of documents and other information and two requests to appear and provide testimony under oath in connection with Enforcement's investigation.

Rule 8210 requires persons subject to FINRA's jurisdiction to provide information to FINRA upon request. The Rule "requires associated persons to comply fully with FINRA's requests for information, testimony, and documents with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding."⁹ The Rule is indispensable to FINRA's ability to carry out its regulatory mandate.¹⁰ Because FINRA lacks subpoena power, it must rely on the Rule to police the activities of associated persons.¹¹ An associated person violates the Rule when he fails to provide full and prompt cooperation to FINRA in response to a request for information.¹² The Rule is unequivocal in requiring an associated person to cooperate.¹³ "Failure to comply with FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and violates FINRA Rule 2010."¹⁴

1. Enforcement's First Request for Production.

At the outset of the investigation, Enforcement sent Jenney a request for documents and information, on February 7, 2019. Jenney responded a few weeks later, providing Enforcement with an explanation of his role in the alleged selling away misconduct and a statement that he had no responsive documents.¹⁵ Later in the investigation, FINRA staff sought additional information from Jenney as well as his in-person OTR testimony. As explained in more detail below, Jenney failed to produce the requested information and twice failed to appear.

2. Jenney Failed to Produce Information on July 29, 2019.

On July 15, 2019, Enforcement sent Jenney the July Request, a second request for production of information and documents. The request sought information regarding Jenney's relationship with the issuer referenced in the Firm's Form U5 filing, as well as one other issuer.

⁹ *Dep't of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20 (NAC May 15, 2019).

¹⁰ *Dep't of Enforcement v. Saliba*, No. 2013037522501, 2019 FINRA Discip. LEXIS 1, at *44 (NAC Jan. 8, 2019), *appeal docketed*, SEC Admin. Proc. No. 3-18989 (Feb. 6, 2019).

¹¹ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008).

¹² *Dep't of Enforcement v. Reifler*, No. 2016050924601, 2019 FINRA Discip. LEXIS 44, at *10 (NAC Sept. 30, 2019), *appeal docketed*, SEC Admin. Proc. No. 3-19589 (Oct. 10, 2019).

¹³ *Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *44 (NAC July 24, 2017).

¹⁴ *Vedovino*, 2019 FINRA Discip. LEXIS 20, at *20-21.

¹⁵ Decl. ¶ 16; CX-6.

The request also sought documents related to both issuers as well as various financial records from Jenney.¹⁶

Enforcement sent the request to Jenney's CRD address by first-class and certified mail, as well as electronically to Jenney's email address.¹⁷ The request called for production by July 29, 2019.¹⁸ On August 19, 2019, Jenney advised Enforcement through his attorney that although Jenney received the request, he did not intend to respond.¹⁹ To date, Jenney has not responded to the request.²⁰

3. Jenney Failed to Appear and Provide Testimony on October 16, 2019.

On September 12, 2019, Enforcement issued its first request to Jenney to appear and provide testimony under oath as a part of its investigation. The request, issued under Rule 8210, scheduled Jenney's testimony for October 16, 2019. The request notified Jenney that failing to appear on the scheduled date could violate Rule 8210 and might lead to a disciplinary proceeding that could result in his being sanctioned, and possibly barred from the securities industry.²¹

Enforcement sent the request to Jenney's counsel by first-class and certified mail. The day before his scheduled testimony, Jenney's attorney advised Enforcement that Jenney did not intend to appear for testimony as requested.²² Jenney in fact did not appear on October 16, 2019.²³

4. Jenney Again Failed to Appear and Provide Testimony on October 23, 2019.

When Jenney failed to appear on October 16, 2019, Enforcement sent him a second request to appear and provide testimony under Rule 8210 on October 23, 2019. This request, too, contained a warning that failing to comply with the request would violate Rule 8210.²⁴

As with the first request for testimony, Enforcement sent the second request to Jenney's counsel by first-class and certified mail. Once again, the day before his scheduled testimony,

¹⁶ Decl. ¶ 17; CX-7.

¹⁷ Decl. ¶ 18.

¹⁸ CX-7.

¹⁹ Decl. ¶ 19; CX-8.

²⁰ Decl. ¶ 19.

²¹ CX-9.

²² Decl. ¶ 21; CX-10.

²³ Compl. ¶¶ 20-25; Decl. ¶ 21.

²⁴ Decl. ¶ 22; CX-11.

Jenney's counsel advised Enforcement that Jenney did not intend to appear.²⁵ Jenney never requested any extension and simply failed to appear for his testimony again on October 23, 2019, without excuse or justification.²⁶

By failing to produce documents and information in response to the July Request, and by failing to appear and testify on two separate occasions, Jenney violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") recommend that if an individual does not respond in any manner to a request for information a bar in all capacities should be standard.²⁷ The Guidelines further provide that when an individual fails to respond the principal consideration in determining sanctions is the importance of the information requested as viewed from FINRA's perspective.²⁸

FINRA needed the information it requested from Jenney to perform its regulatory function and fully investigate potential misconduct. Enforcement was investigating allegations that Jenney had potentially provided investment advice on securities outside his Firm. Jenney's failure to provide testimony deprived FINRA of his evidence and frustrated its ability to fulfill its regulatory responsibilities.²⁹ There is no evident excuse or justification for Jenney's repeated failure to respond to FINRA's requests.

Under these circumstances, I can find no mitigating factors. I therefore conclude that the appropriate sanction is a bar in all capacities.

²⁵ Decl. ¶ 21; CX-10.

²⁶ Compl. ¶¶ 26-31; Decl. ¶¶ 22-23; CX-10; CX-11.

²⁷ FINRA Sanction Guidelines at 33 (2019), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

²⁸ *Id.*

²⁹ *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at *20 (NAC Aug. 12, 2004) (finding that a person who fails to respond to FINRA requests for information subverts FINRA's regulatory responsibilities), *aff'd, sanctions modified*, Exchange Act Release No. 55046, 2007 SEC LEXIS 13 (Jan. 5, 2007); *see Dep't of Enforcement v. Fox*, No. 2012030724101, 2015 FINRA Discip. LEXIS 8, at *29 (OHO Mar. 9, 2015) (FINRA rule requiring advance disclosure to employer of outside securities transactions is designed "to protect investors from unsupervised sales and securities firms from exposure to loss and litigation from transactions by associated persons outside the scope of their employment") (quotation omitted).

IV. Order

Respondent Bryce Patrick Jenney is barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



David Williams
Hearing Officer

Copies to:

Brian P. Jenney (via email and overnight mail)
Robert Fair, Esq. (via email)
Gina Petrocelli, Esq. (via email)
Daniel Hibshoosh, Esq. (via email)
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