

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ERIC JOSEPH MILLER
(CRD No. 1844951),

Respondent.

Disciplinary Proceeding
No. 2014041724602

Hearing Officer—KBW

DEFAULT DECISION

February 22, 2017

Respondent is barred from associating with any FINRA member firm in any capacity for failing to appear and provide testimony at a disciplinary hearing.

For the Complainant: Jasmine K. Shergill, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance by or on behalf of Eric J. Miller

DECISION

I. Introduction

The Department of Enforcement sent a letter to Respondent Eric Joseph Miller requesting, pursuant to FINRA Rule 8210, that he testify as a witness at a disciplinary hearing (“Request Letter”). About three weeks before the disciplinary hearing, Enforcement telephoned Miller and he confirmed that he had received the Request Letter. Nevertheless, Miller did not appear to testify in response to the Request Letter.

Enforcement filed and served the Complaint in accordance with FINRA rules. Miller did not file an answer or otherwise respond to the Complaint. Accordingly, Enforcement filed a motion for entry of default decision (“Default Motion”), together with counsel’s declaration (“Decl.”) in support of the motion, and supporting exhibits. Miller did not respond to the motion.

For the reasons set forth below, I find Miller in default and grant Enforcement’s Default Motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Miller worked for several broker-dealers between 1988 (when he entered the securities industry) and February 7, 2012. From February 7, 2012 through October 1, 2014, and from October 6, 2015 through April 1, 2016, Miller was registered with FINRA member firm Scottsdale Capital Advisors Corp. ("Scottsdale") as a General Securities Representative (Series 7) and a Uniform Securities Agent (Series 63). On April 1, 2016, Scottsdale filed a Uniform Termination Notice for Securities Industry Registration (Form U5), stating that Miller's registration was terminated for "unsatisfactory performance." Miller is no longer registered with FINRA or associated with a member firm.¹

B. FINRA's Jurisdiction

FINRA retains jurisdiction over Miller pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges Miller with failing to respond to a Rule 8210 request during the two-year period after the termination of his registration.

C. Origin of the Investigation

This proceeding originated from Miller's failure to appear to testify as a witness at a disciplinary hearing in response to the Request Letter.²

D. Respondent's Default

Enforcement served Miller with the Complaint, Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and Notice of Complaint on September 6, 2016, and the Complaint and Second Notice of Complaint on October 26, 2016. Each time, Enforcement served Miller by first-class certified mail sent to his last known residential address recorded in the Central Registration Depository ("CRD address").³

Miller did not file an answer or otherwise respond to the Complaint. Accordingly, the Hearing Officer finds that Miller defaulted.⁴

¹ Complaint ("Compl.") ¶¶ 2-5; CX-1, at 13.

² Decl. ¶ 6.

³ Decl. ¶¶ 16, 20; CX-3; CX-4.

⁴ Decl. ¶¶ 19, 23. Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

E. Respondent Failed to Appear and Testify at a Disciplinary Hearing

FINRA Rule 8210 provides that, for the purpose of a proceeding authorized by the FINRA By-Laws or rules, FINRA staff has the right to require a person subject to FINRA's jurisdiction to testify at a location specified by FINRA staff, under oath or affirmation, with respect to any matter involved in the proceeding.

On May 3, 2016, Enforcement sent the Request Letter to Miller requesting, pursuant to FINRA Rule 8210, that he appear as a witness at an upcoming disciplinary hearing in the disciplinary proceeding, *Department of Enforcement v. Scottsdale Capital Advisors Corp.* The Request Letter informed Miller that the hearing was scheduled for June 13-24, 2016, and that Enforcement would provide Miller with a time frame for his testimony before the *Scottsdale* hearing began. The Request Letter advised Miller that "you are obligated to appear as requested and to answer any questions fully, accurately and truthfully" and that "[a] failure on your part to satisfy these obligations could expose you to sanctions, including a permanent bar from the securities industry."⁵

About three weeks later, Enforcement telephoned Miller to discuss his upcoming testimony. During the call, Miller confirmed that he had received the Request Letter, knew the dates of the *Scottsdale* hearing, and could be reached at the email address in Enforcement's files and at the telephone number that Enforcement had just used to call him. During the call, Miller also provided additional email addresses that Enforcement could use to contact him (collectively, the "Miller email addresses").⁶

The next day, Enforcement sent an email to the Miller email addresses for the purpose of scheduling a meeting in preparation for the upcoming *Scottsdale* hearing. Miller did not respond.⁷

On June 2, 2016, Enforcement left Miller a voicemail message reminding him of the upcoming *Scottsdale* hearing and seeking to arrange a telephone call to discuss his testimony. Miller did not respond.⁸

On June 10, 2016, Enforcement sent Miller an email reminding him of the upcoming *Scottsdale* hearing, attaching a copy of the Request Letter, and seeking to discuss logistical issues relating to his testimony. Miller did not respond.⁹

⁵ Compl. ¶¶ 7-8; CX-2.

⁶ Compl. ¶¶ 12-13.

⁷ Compl. ¶ 14.

⁸ Compl. ¶ 15.

⁹ Compl. ¶ 16.

Four days later, after the *Scottsdale* hearing had begun, Enforcement sent an email to Miller noting that Enforcement had repeatedly tried to reach Miller by telephone. In its email, Enforcement requested confirmation that Miller intended to appear for testimony during the *Scottsdale* hearing. Miller did not respond.¹⁰

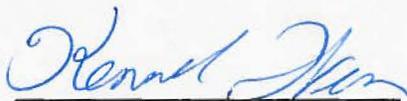
Miller failed to appear as a witness at the *Scottsdale* hearing, which began on June 13, 2016, and has since concluded.¹¹ Respondent therefore violated FINRA Rule 8210. A violation of Rule 8210 constitutes conduct inconsistent with the just and equitable principles of trade and therefore violates Rule 2010. Thus, Miller violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines recommend that, if an individual did not respond in any manner to a FINRA Rule 8210 request, a bar should be standard.¹² Miller's failure to provide testimony at the *Scottsdale* hearing impeded Enforcement's ability to put forth an effective case.¹³ Moreover, there are no mitigating factors present in this case.¹⁴ Thus, I conclude that the appropriate sanction is a bar in all capacities.

IV. Order

Respondent Eric Joseph Miller is barred from associating with any FINRA member firm in any capacity for failing to appear and provide testimony at a disciplinary hearing, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Kenneth B. Winer
Hearing Officer

Copies to:

Eric Joseph Miller (via overnight courier, email, and first-class mail)
Jasmine K. Shergill, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)

¹⁰ Compl. ¶ 17.

¹¹ Compl. ¶ 18.

¹² FINRA Sanction Guidelines at 33 (2016), <http://www.finra.org/industry/sanction-guidelines>.

¹³ Decl. ¶ 25.

¹⁴ Decl. ¶ 26.