

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KEVIN BUSTO  
(CRD No. 2584875),

Respondent.

Disciplinary Proceeding  
No. 2014041252402

Hearing Officer—KBW

**DEFAULT DECISION**

May 4, 2016

**Respondent failed to provide testimony in connection with a FINRA investigation in violation of FINRA Rules 8210 and 2010. Respondent is barred from associating with any FINRA member firm in any capacity.**

For the Complainant: Christina J. Kang, Esq., and Lara Thyragarajan, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No Appearance by Kevin Busto

**DECISION**

**I. Introduction**

Respondent Kevin Busto was associated with FINRA member firm Citigroup Global Markets Inc. from July 2007 to May 15, 2014. The Complaint charges Respondent with failing to provide testimony in response to two Rule 8210 requests issued by FINRA's Department of Enforcement after his association with Citigroup was terminated.

Respondent did not 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. Respondent did not respond to the motion.

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

## **II. Findings of Fact and Conclusions of Law**

### **A. Respondent's Background**

Respondent first became registered with FINRA in 1996. At Citigroup, he was registered with FINRA as a general securities representative. The Uniform Termination Notice for Securities Registration (Form U5) that Citigroup filed in connection with Respondent's termination stated that he was terminated due to "concerns about activity in personal bank account[s] (checks drawn on insufficient funds) - not investment related." Respondent is no longer associated with a FINRA member firm.<sup>1</sup>

### **B. FINRA's Jurisdiction**

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

### **C. Origin of the Investigation**

FINRA's Central Review Group ("CRG") initiated an investigation as a result of the Form U5 filed by Citigroup.<sup>2</sup>

### **D. Respondent's Default**

On December 30, 2015, Enforcement served Respondent with the Notice of Complaint and Complaint by certified mail, return receipt requested, to his last known residential address recorded in the Central Registration Depository ("CRD") and his last address known to Enforcement (collectively, "Respondent's two addresses"). The Notice of Complaint set forth January 27, 2016, as the deadline for the Respondent's response to the Complaint.<sup>3</sup>

Respondent did not respond to the Complaint by the January 27 deadline. On January 29, 2016, Enforcement served the Second Notice of Complaint and Complaint on Respondent by certified mail, return receipt requested, to Respondent's two addresses.<sup>4</sup>

Respondent did not file an answer or otherwise respond to the Complaint. Accordingly, I find that Respondent defaulted.<sup>5</sup>

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<sup>1</sup> Complaint ("Compl.") ¶¶ 2-4.

<sup>2</sup> Default Motion at 2.

<sup>3</sup> Decl. ¶¶ 7, 9; CX-2; CX-3.

<sup>4</sup> Decl. ¶ 10; CX-4; CX-5.

<sup>5</sup> 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 Respond to Requests for Information**

FINRA Rule 8210 authorizes FINRA staff 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 an investigation, examination, or proceeding. FINRA Rule 8210(d) provides that notice shall be deemed received by a formerly registered person by mailing it to the last known residential address of the person as reflected in CRD ("CRD Address"). Rule 8210(d) further provides that, if FINRA staff is aware that the CRD Address is out of date or incorrect, FINRA staff shall mail or otherwise transmit a copy of its request to any other more current address known to the staff. For the reasons stated below, I find that Enforcement complied with the notice requirements of FINRA Rule 8210, and that Respondent failed to provide the information and documentation requested.

On June 3, 2015, FINRA staff sent Respondent a letter requesting, pursuant to FINRA Rule 8210, that he appear on June 11, 2015, to provide on-the-record testimony at FINRA's New York offices. The staff sent the letter to Respondent's two addresses by certified mail, return receipt requested, and first-class mail. Respondent did not appear for his on-the-record testimony.<sup>6</sup>

On July 2, 2015, FINRA staff sent Respondent another letter requesting, pursuant to FINRA Rule 8210, that he appear for testimony. This letter requested that Respondent appear on July 20, 2015. The staff sent the letter by certified mail, return receipt requested, and first-class mail to Respondent's two addresses. Again, Respondent did not appear for his on-the-record testimony.<sup>7</sup>

Enforcement properly served Respondent with two requests for him to appear for on-the-record testimony, and Respondent failed to appear and provide testimony. Respondent therefore violated FINRA Rule 8210.<sup>8</sup> A violation of Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore violates Rule 2010.<sup>9</sup> Thus, Respondent violated FINRA Rules 8210 and 2010.

### **III. Sanctions**

FINRA's Sanction Guidelines ("Guidelines") recommend that, if an individual did not respond in any manner to requests made pursuant to FINRA Rule 8210, a bar in all capacities

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<sup>6</sup> Decl. ¶ 14; Compl. ¶¶ 8-14.

<sup>7</sup> Decl. ¶ 14; Compl. ¶¶ 15-21.

<sup>8</sup> See *Dep't of Enforcement v. Reichman*, No. 200801201960, 2011 FINRA Discip. LEXIS 18, at \*28-29 (NAC July 21, 2011) (finding violation of FINRA Rules 8210 and 2110 by failing to appear for on-the-record testimony); *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at \*9-13 (Sept. 10, 2010) (finding violation of FINRA Rules 8210 and 2110 by failing to respond to several requests for information), *aff'd*, 436 F. App'x 31 (2d Cir. 2011).

<sup>9</sup> See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*30 (Jan. 30, 2009).

should be standard.<sup>10</sup> The Guidelines further provide that where an individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.<sup>11</sup> Additionally, the Guidelines set forth three Principal Considerations in Determining Sanctions for a Partial but Incomplete Response: (1) the importance of the information requested but not provided (as viewed from FINRA's perspective), and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explained valid reason(s) for deficiencies in the response.<sup>12</sup>

In its Default Motion, Enforcement represented that CRG sent letters to Respondent requesting information pursuant to Rule 8210 and Respondent provided a written response after Enforcement notified him that he was to be suspended for failing to provide the requested information.<sup>13</sup> Therefore, it is appropriate to apply the Guidelines for a partial, rather than complete, failure to respond.<sup>14</sup>

Applying the Guidelines for a partial failure to respond, I find that a bar is the appropriate sanction in this proceeding. Respondent has not demonstrated that he substantially complied with all aspects of the Rule 8210 requests. Respondent's failures to respond to the two requests for testimony significantly impeded Enforcement's investigation.<sup>15</sup> He did not respond to the requests for information issued by CRG until Enforcement notified him that he would be suspended for failing to provide the requested information.<sup>16</sup> Furthermore, Respondent has provided no explanation for his failure to respond to the requests for testimony.<sup>17</sup>

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<sup>10</sup> FINRA Sanction Guidelines at 33 (2015), <http://www.finra.org/industry/sanction-guidelines>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Default Motion at 2.

<sup>14</sup> See *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at \*55-56 (June 14, 2013) (citing *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491, at \*25, \*27 (Dec. 20, 2011)).

<sup>15</sup> Decl. ¶ 15; Guidelines at 33 (Principal Considerations in Determining Sanctions for Providing a Partial but Incomplete Response No. 1) (importance of the information requested that was not provided as viewed from FINRA's perspective); Guidelines at 33 (Principal Considerations in Determining Sanctions for Providing a Partial but Incomplete Response No. 2) (degree of regulatory pressure required to obtain a response).

<sup>16</sup> Default Motion at 2; Guidelines at 33 (Principal Considerations in Determining Sanctions for Providing a Partial but Incomplete Response No. 2) (degree of regulatory pressure required to obtain a response).

<sup>17</sup> Decl. ¶ 16; Guidelines at 33 (Principal Considerations in Determining Sanctions for Providing a Partial but Incomplete Response No. 3) (whether the respondent thoroughly explains valid reason(s) for deficiencies in the response).

**IV. Order**

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide testimony requested pursuant to FINRA Rule 8210. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Kenneth Winer  
Hearing Officer

**Copies to:**

Kevin Busto (via overnight courier and first-class mail)  
Christina J. Kang, Esq. (via email and first-class mail)  
Lara Thyagarajan, Esq. (via email)  
Jeffrey Pariser, Esq. (via email)