

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALAN CASHAW, JR.  
(CRD No. 4574278),

Respondent.

Disciplinary Proceeding  
No. 2014041884602

Hearing Officer–LOM

**DEFAULT DECISION**

April 18, 2016

**Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide timely responses to two written requests for information and documents pursuant to FINRA Rule 8210. Respondent is separately barred for failing to provide any response to either of two subsequent written requests for information and documents pursuant to FINRA Rule 8210.**

For the Complainant: Matt T. Morley, Esq., and Jennifer J. Schulp, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: no appearance by or on behalf of Alan Cashaw, Jr.

**DECISION**

**I. Introduction**

The Department of Enforcement filed its Complaint on October 29, 2015. The First Cause of Action alleges that Respondent Alan Cashaw, Jr. failed to timely respond to two requests for information, in violation of FINRA Rules 8210 and 2010. The Second Cause of Action alleges that Cashaw failed to respond to two subsequent requests for information, in violation of FINRA Rules 8210 and 2010.

Respondent did not file an Answer or otherwise respond to the Complaint.

On February 3, 2016, Enforcement filed a motion for entry of default decision (“Default Motion”), together with counsel’s declaration (“Decl.”) in support of the motion, and 18 supporting exhibits (CX-1 through CX-18). Respondent did not respond to the motion. Thus, the

Hearing Officer grants Enforcement's motion and deems the facts alleged in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

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

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

Alan Cashaw, Jr. was first registered with a FINRA member firm in August 2002 as an Investment Company Products/Variable Contracts Representative.<sup>1</sup> Respondent registered with FSC Securities Corporation ("FSC") on October 8, 2008.<sup>2</sup> On July 9, 2014, FSC filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating the Respondent's employment and FINRA registration.<sup>3</sup> Respondent has not since been registered or associated with any FINRA member.<sup>4</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 termination of his FINRA registration, and the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to requests for information during the two-year period after the termination of his registration.

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

FINRA's investigation of Respondent began on July 11, 2014, following the filing of the July 9, 2014 Form U5 by FSC. The Form U5 disclosed that Respondent had been discharged for "violation of firm policies and procedures regarding availability and frequency of client contact" and "failure to properly maintain/retain and secure firm books and records."<sup>5</sup>

Pursuant to FINRA Rule 8210, Enforcement served a series of four written requests for information on Respondent. These requests were essential to Enforcement's investigation of, amount other things, whether Respondent failed to properly maintain, retain, and secure customer records as required by FINRA Rule 4511 and Securities Exchange Act Rule 17a-3.

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

Enforcement served Respondent with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement

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<sup>1</sup> Decl. ¶ 8; CX-2.

<sup>2</sup> Decl. ¶ 9; CX-2.

<sup>3</sup> Decl. ¶ 6; CX-1.

<sup>4</sup> CX-2.

<sup>5</sup> Decl. ¶¶ 6-7; CX-1.

served the Complaint and First Notice of Complaint on October 29, 2015, and the Complaint and Second Notice of Complaint on December 3, 2015.<sup>6</sup> In each instance, Enforcement served Respondent by first-class certified mail addressed to his last known residential address recorded in the Central Registration Depository (“CRD”).<sup>7</sup> Thus, Respondent received valid constructive notice of this proceeding.<sup>8</sup>

Pursuant to Rule 9215, Respondent’s Answer was due by December 21, 2015. Accordingly, the Hearing Officer finds that Respondent is in default.<sup>9</sup> On January 4, 2016, the Hearing Officer issued an Order holding Respondent in default for failing to file an Answer.

**E. Failure To Timely Respond to First Two Requests for Information – First Cause of Action**

FINRA Rule 8210 states that FINRA “may require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information ... with respect to any matter involved in the investigation, complaint, examination or proceeding.”<sup>10</sup> It is well settled that violating the duty to cooperate under Rule 8210 is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

As part of its investigation, on August 4, 2015, FINRA staff requested by letter pursuant to FINRA Rule 8210 that Respondent provide, among other things, a signed statement in response to the allegation in the Form U5 (the “First Request”). Respondent did not respond to this letter.

On October 2, 2014, FINRA staff sent another letter pursuant to FINRA Rule 8210 to Respondent’s CRD address (the “Second Request”) seeking the same information sought in the First Request. Respondent did not respond to the Second Request.

On January 30, 2015, FINRA staff initiated an expedited proceeding (“January 30 Letter”) against Respondent pursuant to FINRA Rule 9552, notifying Respondent that he would be suspended on February 23, 2015, from associating with any FINRA member in any capacity because he had failed to respond to two FINRA Rule 8210 requests for information unless he

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<sup>6</sup> Decl. ¶¶ 14, 20.

<sup>7</sup> Decl. ¶¶ 15, 21.

<sup>8</sup> See, e.g., *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at \*21 n.21 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015). Enforcement also sent copies of the Complaint to Respondent at an email address he had used previously to communicate with FINRA staff.

<sup>9</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.

<sup>10</sup> Complaint (“Compl.”) ¶ 7.

took corrective action before that date.<sup>11</sup> Respondent did not respond to the January 30 Letter. Thus, on February 23, 2015, FINRA staff notified Respondent by letter that he was suspended with a bar from association with any FINRA member firm to take effect on May 4, 2015, unless he took corrective action before that time.<sup>12</sup>

On May 1, 2015, Respondent provided a written response to the First and Second Requests. Accordingly, Respondent's registration was reinstated on May 5, 2015.<sup>13</sup>

Respondent failed to timely respond to the First and Second Requests, responding only after having been suspended pursuant to FINRA Rule 9552. Respondent's untimely response to the First and Second Requests is a violation of FINRA Rules 8210 and 2010.

**F. Respondent Failed To Respond to Third and Fourth Requests for Information – Second Cause of Action**

Following the termination of Respondent's suspension on May 5, 2015, FINRA renewed its investigation of Respondent's potential misconduct.

The information sought from Respondent was critical to FINRA's investigation into, among other things, allegations that Respondent had not properly made and preserved books, accounts, records, memoranda, and correspondence as required by FINRA Rule 4511 and Securities Exchange Rule 17a-3.

On August 7, 2015, FINRA staff sent the Third Request to Respondent pursuant to FINRA Rule 8210, requesting further information in connection with its investigation. Respondent did not respond to the Third Request.<sup>14</sup>

On September 1, 2015, FINRA staff sent the Fourth Request to Respondent pursuant to FINRA Rule 8210, requesting the same information set forth in the Third Request. Respondent did not respond to the Fourth Request.<sup>15</sup>

By failing to respond to the Third and Fourth Requests, Respondent violated FINRA Rules 8210 and 2010.

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<sup>11</sup> Compl. ¶ 11.

<sup>12</sup> Compl. ¶ 13.

<sup>13</sup> Compl. ¶ 14.

<sup>14</sup> Compl. ¶ 22.

<sup>15</sup> Compl. ¶ 22.

### **III. Sanction**

FINRA's Sanction Guidelines ("Guidelines") recommend that where an individual does not respond in any manner a bar in all capacities should be standard.<sup>16</sup> The Guidelines further provide that, where an individual provides 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>17</sup> Additionally, the Guidelines contain certain 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 a valid reasons) for deficiencies in the response.<sup>18</sup>

#### **A. First Cause of Action**

Here, Respondent responded to FINRA staff's initial two requests for information only after an expedited proceeding was filed and a suspension against him was pending. Thus, I apply the Guidelines for a partial, rather than complete, failure to respond. The evidence reflects a number of aggravating factors, including the fact that a high degree of regulatory pressure was required to obtain a response. Thus, I conclude that the appropriate sanction is a bar in all capacities.

#### **B. Second Cause of Action**

Here, Respondent did not respond at all to FINRA staff's subsequent two requests for information. Thus, I apply the Guidelines for a complete failure to respond.<sup>19</sup> The evidence reflects a number of aggravating factors. Among others, the conduct under investigation was serious and FINRA staff made a number of requests. Thus, I conclude that the appropriate sanction is a bar in all capacities.

### **IV. Order**

Respondent Alan Cashaw, Jr. is barred from associating with any member firm in any capacity for failing to timely comply with the first two requests for information and documents, in violation of FINRA Rules 8210 and 2010. He is separately barred from associating with any member firm in any capacity for failing to respond in any manner to the subsequent two requests

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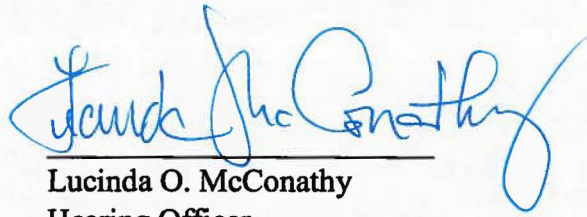
<sup>16</sup> Guidelines at 33.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</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)).

for information and documents, in violation of FIRNA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.



**Lucinda O. McConathy**  
**Hearing Officer**

**Copies to:**

**Alan Cashaw (via electronic and first-class mail)**

**Matt T. Morley, Esq. (via electronic and first-class mail)**

**Jennifer Schulp, Esq. (via electronic mail)**

**Jeffrey Pariser, Esq. (via electronic mail)**