

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ERIC KUCHEL
(CRD No. 4118500),

Respondent.

Disciplinary Proceeding
No. 2015047966701

Hearing Officer-DW

DEFAULT DECISION

May 9, 2016

Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for on-the-record testimony, in violation of Rules 8210 and 2010.

Appearances

For the Complainant: Soo H. Im, Esq., Christopher Perrin, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No Appearance

DECISION

I. Introduction

FINRA's Department of Enforcement requested that Respondent Eric Kuchel provide on-the-record testimony ("OTR") as part of an investigation into mutual fund transactions that occurred at his employer member firm. Enforcement scheduled the OTR in April 2015, but Kuchel requested several postponements and adjournments. Enforcement staff accommodated all of these requests. On August 19, 2015, Kuchel finally appeared for testimony but interrupted the questioning to request an adjournment to seek legal counsel. The staff granted his request, and again continued Kuchel's testimony. Kuchel thereafter failed to cooperate with FINRA's investigation by declining to appear for testimony in October and again in November 2015. Enforcement subsequently initiated this disciplinary proceeding.

Enforcement filed its Complaint on January 6, 2016. The Complaint alleges that Kuchel violated FINRA Rules 8210 and 2010 by failing to appear for his on-the-record testimony during the investigation. Kuchel has not filed an Answer to the Complaint.

On March 29, 2016, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions, supported by an accompanying memorandum of law, the declaration of Soo H. Im (“Decl.”), and eight exhibits. Kuchel did not respond to the motion.

For the reasons set forth below, I find Respondent in default and grant Enforcement’s Default Motion.¹

II. Findings of Fact and Conclusions of Law

A. Respondent’s Background

Kuchel has been associated with a number of FINRA member broker-dealers since entering the securities industry in 2000. He was associated with Crown Capital between July 2007 and November 2014 as a General Securities Representative and a General Securities Principal, before moving to another FINRA member firm in the same capacities.²

On November 24, 2015, Kuchel’s latest firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on his behalf with FINRA, disclosing that Kuchel was discharged on November 19, 2015, for failing to appear at his on-the-record testimony with FINRA. He has not been associated with a FINRA member firm since then.³

B. FINRA’s Jurisdiction

FINRA has jurisdiction over Kuchel 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 Kuchel’s association with a FINRA member firm, and the Complaint charges him with failure to comply with FINRA Rule 8210 while he was registered with a FINRA member firm.⁴

C. Origin of the Investigation

In 2014, Enforcement began an inquiry into certain mutual fund transactions at Crown Capital Securities, L.P. (“Crown Capital”), a FINRA-regulated broker-dealer, as well as the

¹ Respondent is notified that he may move to set aside the default pursuant to Rule 9269(c) upon a showing of good cause.

² Decl. ¶¶ 7-8; Complainant’s Exhibit (“CX-”) 1.

³ Decl. ¶¶ 9, 11; CX-1.

⁴ Decl. ¶ 11; Compl. ¶ 4.

firm's supervision of the transactions. As one of the registered representatives responsible for the relevant transactions, Kuchel's conduct was one focus of the inquiry. Kuchel's involvement in a private securities transaction was also within the scope of the investigation.⁵

D. Respondent's Default

Enforcement served Kuchel 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 January 6, 2016, and the Complaint and Second Notice of Complaint on February 4, 2016.⁶ Each time, Enforcement served Kuchel by certified mail sent to his current residential address recorded in the Central Registration Depository. Enforcement also sent copies to an additional address it found online for Kuchel and to two email addresses Kuchel used during the investigation.⁷ Thus, Kuchel received valid constructive notice of this proceeding.⁸ Kuchel has not responded to the Complaint or Second Notice of Complaint. Thus, Kuchel defaulted.

E. Respondent Failed to Appear and Provide Sworn Testimony

FINRA Rule 8210(a) authorizes FINRA staff, for purposes of an investigation, examination, or proceeding, to require a person subject to FINRA's jurisdiction to provide information and documents with respect to any matter involved in the investigation, examination, or proceeding.

In 2014, FINRA staff began investigating certain mutual fund transactions involving Crown Capital representatives, including Kuchel, and the firm's supervision of the transactions.⁹ As part of its investigation, FINRA staff sent Kuchel a written Rule 8210 request for his on-the-record testimony.¹⁰ Shortly thereafter, Kuchel's counsel asked to reschedule the April 2, 2015 testimony due to a scheduling conflict.¹¹ The staff agreed and rescheduled the testimony for May 14, 2015.¹²

⁵ Decl. ¶ 6; Compl. ¶ 6.

⁶ Decl. ¶¶ 12, 16.

⁷ *Id.*

⁸ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20 n.21 (NAC June 3, 2014), aff'd, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

⁹ Decl. ¶ 6.

¹⁰ Compl. ¶ 8.

¹¹ Compl. ¶ 10.

¹² Compl. ¶ 11.

Shortly before Kuchel was due to testify, his attorney advised the staff that Kuchel needed to reschedule his OTR because he was recovering from a “very recent accident.” Counsel represented that Kuchel would be available to testify during the week of June 15.¹³ Shortly before Kuchel’s rescheduled testimony date of June 16, Kuchel communicated directly with the staff, requesting another continuance due to complications from his accident.¹⁴ The staff contacted counsel to determine why the request came from Kuchel directly; counsel advised that he no longer represented Kuchel.¹⁵ Kuchel and the staff agreed to postpone his testimony until August.¹⁶

On August 19, 2015, Kuchel appeared without counsel for his OTR. The testimony went from approximately 9:00 a.m. to 1:00 p.m., when Kuchel stopped the proceedings, stating that he was “in over [his] head” and needed to consult with counsel before continuing.¹⁷ The staff suspended the proceeding and rescheduled the OTR for September 22, 2015.¹⁸ Shortly before his new testimony date, Kuchel contacted the staff asking for still more time to obtain counsel.¹⁹ The staff again agreed and rescheduled Kuchel’s OTR for October 28 and 29, 2015.²⁰

The day before the OTR was scheduled to reconvene, Kuchel again asked for more time.²¹ Having already waited more than six months to obtain Kuchel’s testimony, the staff declined to postpone his testimony again, and Kuchel failed to appear on October 28, 2015.²² The staff subsequently sent Kuchel another Rule 8210 request requiring his testimony on November 18 and 19, 2015.²³ Kuchel once again sent the staff a letter the day before testimony was scheduled to begin, stating that he would not appear because he was still unable to secure

¹³ Compl. ¶ 12.

¹⁴ Compl. ¶ 15.

¹⁵ Compl. ¶ 16.

¹⁶ Compl. ¶ 17.

¹⁷ Compl. ¶ 21.

¹⁸ Compl. ¶¶ 21-22.

¹⁹ Compl. ¶ 26.

²⁰ Compl. ¶¶ 27-28.

²¹ Compl. ¶ 32.

²² Compl. ¶¶ 33-34.

²³ Compl. ¶ 35.

counsel.²⁴ Kuchel failed to appear for this OTR as well.²⁵ Kuchel’s months-long delays—and ultimate failure to provide his testimony—impeded the investigation.²⁶

By failing to appear for testimony on October 28 and again on November 18, 2015, after acknowledging his receipt of properly served Rule 8210 requests, Kuchel violated FINRA Rules 8210 and 2010.²⁷

III. Sanctions

FINRA’s Guidelines recommend that if an individual does not respond to a Rule 8210 request for information in any manner, a bar in all capacities should be standard.²⁸ 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.²⁹ The Guidelines also contain 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.³⁰

Here, Kuchel provided incomplete testimony. Thus, I applied the Guidelines for a partial failure to respond.³¹

No mitigating factors are apparent in this case. The conduct under investigation in the matter was serious. Kuchel did not substantially comply with the request for his testimony, frustrating the investigation by refusing to complete his OTR without adequate excuse despite receiving a number of reasonable accommodations and adjournments. Given the vital importance of FINRA’s need to gather necessary information in order to detect possible misconduct, and

²⁴ Compl. ¶ 38.

²⁵ Compl. ¶ 39.

²⁶ Compl. ¶ 40.

²⁷ A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also violates FINRA Rule 2010. *See, e.g., CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 n.36 (Jan. 30, 2009).

²⁸ FINRA Sanction Guidelines at 33 (2015), <http://www.finra.org/Industry/Sanction-Guidelines>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *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)).

FINRA investigative staff's repeated agreements to permit Kuchel additional time to comply with reasonable investigative requests, Kuchel's failures to comply are unacceptable. I conclude that the appropriate sanction is a bar in all capacities.

IV. Order

Eric Kuchel 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:

Eric Kuchel (via first-class mail)
Soo H. Im, Esq. (via email and first-class mail)
Christopher Perrin, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)