

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GABY DELISME
(CRD No. 4533627),

Respondent.

Disciplinary Proceeding
No. 2013036799902

Hearing Officer–MJD

DEFAULT DECISION

August 6, 2015

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

Appearances

Eric Hansen, Esq. and Richard Chin, Esq. for the Department of Enforcement.

No appearance by or for Gaby Delisme.

DECISION

Respondent Gaby Delisme was a broker with Merrill Lynch, Pierce, Fenner & Smith, Incorporated (“Merrill Lynch” or the “Firm”). The Firm terminated Delisme after determining that she was not cooperating with an internal review of the Firm’s procedures concerning active accounts. The Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA’s Central Registration Depository (“CRD”), disclosing the reason the Firm terminated her.

After receiving the Form U5, FINRA began investigating Delisme’s conduct. In the course of its investigation, FINRA staff sent Delisme two written requests that she appear to provide sworn testimony at an on-the-record interview. Delisme did not attend the interview.

The Department of Enforcement initiated this disciplinary proceeding by filing a Complaint with the Office of Hearing Officers. The Complaint alleges that Delisme violated FINRA Rule 8210 by failing to attend an on-the-record interview. Delisme did not file an Answer or otherwise respond to the Complaint.

On June 25, 2015, Enforcement filed a Motion for Entry of Default Decision supported by the Declaration of Eric Hansen (“Hansen Decl.”) and 11 exhibits (CX-1 through CX-11). Delisme did not respond to the motion. Thus, the Hearing Officer grants Enforcement’s motion and deems the facts alleged in the attached Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

I. Findings of Fact and Conclusions of Law

A. Background

Delisme was registered with FINRA through Merrill Lynch as a General Securities Representative, General Securities Principal, and General Securities Sales Supervisor from 2002 until April 30, 2013, when the Firm filed a Form U5 to terminate her registration.¹ The Form U5 stated that the reason for Delisme’s termination was the “loss of management’s confidence for conduct in connection with active account review procedures, and failure to be forthcoming in discussions with management.”²

B. Jurisdiction

Delisme was last registered with FINRA on April 30, 2013. Although she is not currently registered with FINRA or associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4 of FINRA’s By-Laws because (i) the Complaint was filed within two years after Delisme’s registration terminated, and (ii) the Complaint charges her with failing to comply with requests for testimony that FINRA staff issued during the two-year period following the termination of her FINRA registration.

C. Delisme Defaulted by Failing to Answer the Complaint

Enforcement served Delisme 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 March 26, 2015, and the Complaint and Second Notice of Complaint on April 30, 2015.³ In each case, Enforcement served Delisme by first-class certified mail addressed to her last known residential address recorded in CRD.⁴ The Notice of Complaint and Complaint were delivered to Delisme at the residential address reflected in CRD on April 2, 2015.⁵ The Second Notice of Complaint and Complaint were

¹ CX-1, at 4, 6 (Delisme’s CRD records).

² Hansen Decl. ¶ 6; CX-2, at 1, 4 (Delisme’s Form U5, dated April 30, 2013).

³ Hansen Decl. ¶¶ 13, 18.

⁴ *Id.*

⁵ Hansen Decl. ¶ 15; CX-9 (signed USPS certified mail return receipt and USPS.com tracking records).

delivered to the residential address reflected in CRD on May 4, 2015.⁶ Thus, Delisme received valid constructive notice of this proceeding.⁷

Pursuant to Rule 9215, Delisme's Answer was due on or before May 18, 2015. Delisme did not respond to the Complaint and Second Notice of Complaint. Thus, Delisme is in default.

D. Delisme Failed to Attend Her On-the-Record Interview

Enforcement twice sent Delisme written notices to attend an on-the record interview. On April 14, 2014, pursuant to FINRA Rule 8210, FINRA staff sent Delisme a letter requesting that she appear for an on-the-record interview on April 24, 2014. The letter was sent to Delisme's last known residential address recorded in CRD, via certified and first-class mail.⁸ Delisme failed to appear for her on-the-record interview on April 24, 2014.⁹

On April 28, 2014, FINRA staff sent Delisme another request, pursuant to Rule 8210, that she appear for an on-the-record interview. The second 8210 letter asked that she appear for her on-the-record interview on May 8, 2014. The second 8210 letter was sent to Delisme's last known residential address recorded in CRD, via certified and first-class mail.¹⁰ Delisme failed to appear for testimony on May 8, 2014.¹¹

Delisme never appeared to provide sworn testimony at an on-the-record interview as requested in the Rule 8210 letters dated April 14 and 28, 2014. Thus, Delisme violated FINRA Rules 8210 and 2010.

II. Sanctions

A. Failure to Respond to Information Requests

Delisme failed to respond to FINRA staff's requests that she provide on-the-record testimony. FINRA's Sanction Guidelines ("Guidelines") recommend that, if an individual did not respond in any manner, a bar in all capacities should be standard.¹² The Guidelines further provide that, where an individual fails to respond, the principal consideration in determining

⁶ Hansen Decl. ¶ 19; CX-11 (USPS certified mail return receipt and USPS.com tracking records).

⁷ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 n.21 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 34-75531 (July 27, 2015).

⁸ Hansen Decl. ¶ 9; CX-3 (April 14, 2014, 8210 letter to Delisme).

⁹ Hansen Decl. ¶ 8.

¹⁰ Hansen Decl. ¶ 9; CX-4 (April 28, 2014, 8210 letter to Delisme).

¹¹ Hansen Decl. ¶ 8.

¹² FINRA Sanction Guidelines (2015), at 33, <http://www.finra.org/industry/sanction-guidelines>.

sanctions is the importance of the information requested (as viewed from FINRA's perspective).¹³

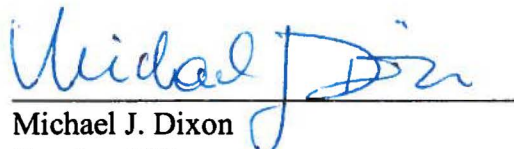
Delisme's testimony was needed for FINRA to perform its regulatory function to fully investigate potential misconduct. Enforcement was investigating allegations by Merrill Lynch that Delisme performed improper active account reviews, backdated documents, and made misrepresentations to her employer.¹⁴ Delisme's failure to provide testimony prevented FINRA from completing its regulatory responsibilities.¹⁵ The evidence shows no reason for her failure to respond to FINRA's requests.

In summary, Delisme failed to respond to Enforcement's information requests. There are no mitigating factors present in this case. Thus, the Hearing Officer concludes that the appropriate sanction is a bar in all capacities.

III. Order

Gaby Delisme is barred from associating with any FINRA member firm in any capacity for failing to attend an on-the-record interview, in violation of FINRA Rules 8210 and 2010.

The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Michael J. Dixon
Hearing Officer

Copies to:

Gaby Delisme (*via overnight courier and first-class mail*)

Eric Hansen, Esq. (*via email and first-class mail*)

Richard Chin, Esq. (*via email*)

Jeffrey D. Pariser, Esq. (*via email*)

¹³ *Id.*

¹⁴ Def. Mot., at 7.

¹⁵ *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at *19-20 (NAC Aug. 12, 2004) (finding that a person who fails to respond to FINRA requests for information subverts FINRA's regulatory responsibilities).

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

**Gaby Delisme
(CRD No. 4533627),**

Respondent.

**DISCIPLINARY PROCEEDING
No. 2013036799902**

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. Gaby Delisme ("Delisme" or "Respondent"), a former registered representative at Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill" or the "Firm"), a FINRA-registered firm, was terminated by the Firm for misconduct surrounding an audit of the Firm's account review process, including backdating documents and certain misrepresentations she made to Firm personnel.

2. Enforcement initiated an investigation into this potential misconduct by Delisme and requested, on two occasions, pursuant to FINRA Rule 8210, that she appear and provide testimony. Delisme failed to comply with these requests, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Delisme entered the securities industry in May 2001 when she became employed in a non-registered capacity at a FINRA-registered broker dealer.

4. In May 2001, Delisme became employed with the Firm, and in October 2004 became associated with the Firm as a registered representative. While associated with the Firm, she was registered as a General Securities Representative (Series 7), a General Securities Principal (Series 24), and a General Securities Sales Supervisor (Series 9 and 10).

5. On April 30, 2013, Merrill filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA, stating that Delisme's association with the Firm was terminated on March 31, 2013 for "loss of management's confidence due to her conduct in connection with active account review procedures and her failure to be forthcoming in discussions with management."

6. Although Respondent is no longer registered or associated with a FINRA regulated broker-dealer, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with the Firm, namely, April 30, 2013, and (2) the Complaint charges her with failing to respond to repeated requests for on-the-record testimony during the two-year period after the date upon which she ceased to be registered or associated with a FINRA regulated broker-dealer.

FIRST CAUSE OF ACTION

Failure to Respond to FINRA Enforcement's Requests to Appear and Provide Testimony Violation of FINRA Rules 8210 and 2010

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.

8. FINRA Rule 8210(a) (1) requires a "member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or

electronically ... and to testify at a location specified by FINRA staff...with respect to any matter involved in the investigation, complaint, examination, or proceeding..."

9. FINRA Rule 2010 states that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

10. A violation of FINRA Rule 8210 is a violation of FINRA Rule 2010.

11. FINRA opened an investigation into Delisme on June 12, 2013 after receiving a Form U5 from Merrill. Enforcement sent Delisme a letter dated April 14, 2014 ("April 14th Letter") requesting, pursuant to Rule 8210, that she appear and provide testimony regarding the information in the Form U5. In accordance with FINRA Rule 8210(d), the April 14th Letter was mailed to Delisme's current address of record as reflected in the Central Registration Depository ("CRD") by both certified mail, return receipt requested, and first class mail. The April 14th Letter requested that Delisme appear for testimony at FINRA's offices at 200 Liberty Street, New York, New York on April 24, 2014.

12. The copy of the April 14th Letter sent via certified mail to Delisme's CRD Address was returned to Enforcement on May 15, 2014 by the U.S. Postal Service with notations "Return to Sender—Unclaimed—Unable to Forward." The copy of this letter sent by first class mail to Delisme's CRD Address was not returned. Delisme failed to appear for testimony on April 24, 2014.

13. On April 28, 2014 ("April 28th Letter") Enforcement sent a second letter to Delisme notifying her that she had not complied with the April 14th Letter and requested, pursuant to Rule 8210, that Delisme appear at FINRA's offices at 200 Liberty Street, New York New York on May 8, 2014 to provide sworn testimony concerning the information in the Form U5 filed by the Firm and the related matters investigated by the Firm. The April 28th Letter,

together with a copy of Enforcement's April 14th Letter, was sent to Delisme's CRD Address by certified mail, return receipt requested, and by first class mail.

14. The April 28th Letter sent via certified mail to Delisme's CRD Address was delivered on May 2, 2014. The certified mail receipt that accompanied the April 28th Letter was returned to FINRA with the signature of "E. Delisme." The copy of the letter sent by first class mail to Delisme's CRD Address was not returned to Enforcement. Delisme failed to appear for testimony on May 8, 2014.

15. Enforcement has sent multiple requests for Delisme to appear and provide testimony pursuant to FINRA Rule 8210 to her CRD Address, as described above. To date, Delisme has failed to appear and provide sworn testimony to Enforcement as requested.

16. The acts, practices and conduct described above demonstrate Delisme's failure to cooperate with this investigation and constitute violations of FINRA Rules 8210 and 2010.


RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;**
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and**
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.**

FINRA DEPARTMENT OF ENFORCEMENT

Date: 3/24/15



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