

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANTONIO V. FALCON  
(CRD No. 5615176),

Respondent.

Disciplinary Proceeding  
No. 2013035252902

Hearing Officer—MC

**DEFAULT DECISION**

February 25, 2015

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

**Appearances**

Artur M. Wlazlo, Esq., Jericho, NY, and Lara Thyagarajan, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent Antonio V. Falcon.

**DECISION**

**I. Introduction**

From January 2011 through October 2012, Respondent Antonio V. Falcon was registered as an Investment Company and Variable Contracts Products Representative (“IR”) through NY Life Securities LLC.<sup>1</sup> On November 29, 2012, NY Life filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) with FINRA reporting that Falcon’s employment had been terminated on October 30 “after [he admitted] that he violated the company’s medical underwriting procedures by providing fluid samples for three clients.”<sup>2</sup>

---

<sup>1</sup> Complaint (“Compl.”) ¶ 2; Declaration of Artur M. Wlazlo in Support of Motion for Entry of Default Decision and Request for Sanctions (“Wlazlo Decl.”) ¶ 6; Complainant’s Exhibit (“CX”) 1. Because Falcon is in default, as detailed below, the factual determinations in this decision are based on allegations in the attached Complaint, which are deemed admitted, as well as on Wlazlo’s declaration and its exhibits.

<sup>2</sup> Compl. ¶ 3; Wlazlo Decl. ¶ 7; CX-1; CX-2.

To investigate the circumstances of Falcon's termination from NY Life, FINRA's Member Regulation Department Staff requested, pursuant to FINRA Rule 8210, that Falcon provide detailed information, including any relevant documents.<sup>3</sup> Falcon replied to the request with a single-page letter denying the "allegations made by New York Life Insurance Company" but not providing the requested information.<sup>4</sup> Falcon did not respond to the Staff's four subsequent requests that he appear and provide on-the-record testimony pursuant to Rule 8210.<sup>5</sup>

Accordingly, the Department of Enforcement filed a Complaint on October 1, 2014, alleging that by failing to appear for four scheduled on-the-record interviews, Falcon violated FINRA Rules 8210 and 2010.

Falcon did not answer the Complaint. Consequently, on December 31, 2014, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions and Memorandum of Law together with the Declaration of Artur M. Wlazlo and 20 exhibits. Falcon did not respond to the Motion.

## **II. Jurisdiction**

Falcon was registered with FINRA as an IR through NY Life from January 14, 2011, until he was discharged on October 30, 2012. His registration with FINRA was terminated effective November 29, 2012, when NY Life filed the Form U5.<sup>6</sup> Since that date, Falcon has not been registered with FINRA or associated with any FINRA member.<sup>7</sup> Falcon remains subject to FINRA's jurisdiction, however, because the Complaint: (1) was filed within two years after the effective date of the termination of his registration; and (2) charges him with failing to respond to requests for information during the two-year period following the termination.<sup>8</sup>

## **III. Respondent's Default**

On October 1, 2014, Enforcement served the Notice of Complaint and Complaint on Falcon by first-class and certified mail, return receipt requested, to his residential address as reflected in FINRA's Central Registration Depository ("CRD address") and to another address Falcon provided during the investigation.<sup>9</sup> The first-class mailings were not returned. The

---

<sup>3</sup> Compl. ¶¶ 7-8; Wlazlo Decl. ¶ 11; CX-3.

<sup>4</sup> Compl. ¶ 9; Wlazlo Decl. ¶ 12; CX-3; CX-4.

<sup>5</sup> Compl. ¶¶ 1, 14, 19, 24, 30; Wlazlo Decl. ¶¶ 13-14.

<sup>6</sup> Compl. ¶¶ 2-3; Wlazlo Decl. ¶¶ 5-8; CX-1; CX-2.

<sup>7</sup> Compl. ¶¶ 4-5; Wlazlo Decl. ¶¶ 8-9.

<sup>8</sup> Article V, Sec. 4(a), FINRA By-Laws, [www.finra.org/Industry/Regulation/FINRARules](http://www.finra.org/Industry/Regulation/FINRARules).

<sup>9</sup> Wlazlo Decl. ¶ 16.

certified mailings were returned, marked “unclaimed.”<sup>10</sup> Falcon failed to file an Answer or responsive pleadings by October 29, 2014, the deadline set in the Notice of Complaint.<sup>11</sup>

Accordingly, on October 30, 2014, Enforcement served a second Notice of Complaint and Complaint on Falcon by first-class and certified mail, return receipt requested, to his CRD address and the alternate address Falcon had provided.<sup>12</sup> The mailings were not returned.<sup>13</sup> Falcon failed to file his answer by November 17, 2014, the deadline set in the second notice of complaint.<sup>14</sup>

Falcon received constructive notice of this proceeding and, therefore, he defaulted by failing to file an Answer or other response to the Complaint.<sup>15</sup> The allegations in the attached Complaint are deemed admitted pursuant to FINRA Rules 9215(f) and 9269(a).

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

##### **A. The Requests for Testimony Pursuant to Rule 8210**

###### **1. April 21, 2014 Request for Testimony**

On April 21, 2014, pursuant to FINRA Rule 8210, the Staff sent Falcon a letter requesting that he appear to provide testimony on May 20, 2014. The Staff sent the letter by certified mail, return receipt requested, and by first-class mail to Falcon’s CRD address. The certified mailing was returned to the Staff, marked “Return to Sender/No Such Street/Unable to Forward.” The first-class mailing was not returned. Falcon did not appear for his on-the-record interview on May 20, 2014.<sup>16</sup>

###### **2. May 21, 2014 Request for Testimony**

On May 21, 2014, the Staff sent Falcon a second letter requesting that he appear to provide testimony pursuant to Rule 8210. The Staff sent the letter to Falcon’s CRD address by certified mail, return receipt requested, and by first-class mail. The certified mailing was returned

---

<sup>10</sup> Wlazlo Decl. ¶¶ 17-18.

<sup>11</sup> Wlazlo Decl. ¶ 21.

<sup>12</sup> Wlazlo Decl. ¶ 22.

<sup>13</sup> Wlazlo Decl. ¶¶ 23-24.

<sup>14</sup> Wlazlo Decl. ¶ 27.

<sup>15</sup> See FINRA Rules 9134(a)(2), (b)(1), and (b)(3); *Dep’t of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at \*19-21 (NAC July 26, 2012) (respondent had constructive notice of complaint mailed to his CRD address); see also NASD Notice to Members 99-77, <http://www.finra.org/Industry/Regulation/Notices/1999/P004087>.

<sup>16</sup> Compl. ¶¶ 10-14; Wlazlo Decl. ¶¶ 30-32; CX-9; CX-10; CX-11.

to the Staff, marked "Return to Sender/Unclaimed/Unable to Forward." The first-class mailing was not returned. Falcon did not appear to testify on the scheduled date, June 10, 2014.<sup>17</sup>

### **3. June 12, 2014 Request for Testimony**

On June 12, 2014, the Staff sent Falcon a third letter requesting that he appear to provide testimony pursuant to Rule 8210. This time the Staff sent the letter to Falcon's CRD address and to the other address Falcon had provided, by certified mail, return receipt requested, and by first-class mail. Both certified mailings were returned, marked "Return to Sender/Unclaimed/Unable to Forward." Neither first-class mailing was returned to the Staff. Falcon did not appear to testify as scheduled on July 1, 2014.<sup>18</sup>

### **4. July 8, 2014 Request for Testimony**

On July 8, 2014, the Staff sent Falcon a fourth letter requesting that he appear to provide testimony pursuant to Rule 8210. The Staff again sent the letter to Falcon by certified mail, return receipt requested, and by first-class mail to Falcon's CRD address and the other address. The certified mailing to Falcon's CRD address was returned, marked "Return to Sender/Insufficient Address/Unable to Forward." The other mailings were not returned to the Staff. Falcon did not appear to testify as scheduled on July 16, 2014.<sup>19</sup>

## **B. Discussion**

FINRA Rule 8210(a) provides:

For the purpose of an investigation ... FINRA staff shall have the right to: (1) require a ... person associated with a member ... to testify at a location specified by FINRA staff, under oath or affirmation ... with respect to any matter involved in the investigation, complaint, examination, or proceeding ....

FINRA Rule 8210 (c) requires unequivocally that registered persons comply with FINRA information requests: "[n]o member or person shall fail to provide information" requested pursuant to the Rule.

Falcon was properly notified of the Staff's instruction to provide testimony in the investigation of the circumstances of NY Life's termination of his employment. The Staff sent its notifications of the time and locations at which Falcon should appear to testify on four occasions to Falcon's CRD address, and on two occasions to an additional address Falcon provided. Each notification informed Falcon that he was "obligated to appear as requested."<sup>20</sup> Not only did

---

<sup>17</sup> Compl. ¶¶ 15-19; Wlazlo Decl. ¶¶ 33-36; CX-12; CX-13; CX-14.

<sup>18</sup> Compl. ¶¶ 20-24; Wlazlo Decl. ¶¶ 37-40; CX-15; CX-16; CX-17.

<sup>19</sup> Compl. ¶¶ 25-30; Wlazlo Decl. ¶¶ 41-45; CX-18; CX-19; CX-20.

<sup>20</sup> CX-9; CX-12; CX-15; CX-18.

Falcon fail to appear, he failed to respond in any manner to the notifications. Falcon's failures to appear to provide testimony violated FINRA Rules 8210 and 2010.<sup>21</sup>

## V. Sanctions

It is well established that a violation of Rule 8210 is serious because the rule "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."<sup>22</sup> The rule thus "is at the heart of the self-regulatory system for the securities industry."<sup>23</sup> For these reasons, FINRA's Sanction Guidelines recommend a bar when an individual does not respond in any manner.<sup>24</sup>

In its initial Rule 8210 request, the Staff asked Falcon to "explain with specificity the circumstances" that led NY Life to terminate his employment. The request specifically called for Falcon to provide, along with other information, the number and identities of clients affected by his conduct; the identities of NY Life employees involved in the matter; an explanation of what he did, and why; whether there were other similar incidents; and any guidance he may have received from NY Life on how to complete life insurance applications.<sup>25</sup> Falcon failed to provide information responsive to any of these requests.<sup>26</sup>

Even if Falcon's letter were to be considered a response to the initial request for information, it was partial and incomplete. When a person associated with a member gives "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>27</sup> On its face, Falcon's letter falls far short of substantially complying with the Staff's request for information. It therefore does not mitigate his subsequent failures to appear for scheduled on-the-record interviews. Falcon's failure to fulfill his obligation to provide testimony deprived FINRA of the opportunity to conduct its investigation and obtain information essential to determining whether Falcon engaged in potentially serious misconduct.

The record does not reveal any mitigating facts that would justify a sanction less than a bar. Therefore, the appropriate sanction is a bar.

---

<sup>21</sup> See *Michael A. Rooms*, 58 S.E.C. 220, 228 & n.15 (2005) (holding that efforts to impede NASD (now FINRA) investigations violate high standards of commercial honor and just and equitable principles of trade), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

<sup>22</sup> *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993).

<sup>23</sup> *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at \*13 (Nov. 14, 2008), *petition denied*, 347 F. App'x 692 (2d Cir. 2009).

<sup>24</sup> *FINRA Sanction Guidelines* at 33 (2013), [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines).

<sup>25</sup> CX-3.

<sup>26</sup> CX-4.

<sup>27</sup> *Guidelines* at 33; *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at \*13 n.25 (Feb. 20, 2014).

**VI. Order**

Respondent Antonio V. Falcon is barred for violating FINRA Rules 8210 and 2010 by failing to respond to FINRA Staff requests for on-the-record testimony. If this decision becomes FINRA's final disciplinary action, the bar shall become effective immediately.

**SO ORDERED.**

  
\_\_\_\_\_  
Matthew Campbell  
Hearing Officer

Copies to:

Antonio V. Falcon (*via first-class mail*)  
Artur M. Wlazlo, Esq. (*via email and first-class mail*)  
Lara Thyagarajan, Esq. (*via email*)  
Jeffrey D. Pariser, Esq. (*via email*)

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

Department of Enforcement,

Complainant,

v.

Antonio V. Falcon (CRD No. 5615176),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2013035252902

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. From April through July 2014, Respondent Antonio V. Falcon (“Respondent” or “Falcon”) failed to appear four times for on-the-record interviews noticed pursuant to FINRA Rule 8210. Falcon therefore violated FINRA Rules 8210 and 2010.

**JURISDICTION**

2. Falcon first became registered with FINRA as an Investment Company and Variable Contracts Products Representative (IR) through a member firm on February 5, 2009, He was associated with that firm through September 27, 2010. From January 14, 2011 through October 30, 2012, he was registered as an Investment Company and Variable Contracts Products Representative (IR) through NY Life Securities LLC (“NY Life” or the “Firm”) (BD No. 5167).

3. On November 29, 2012, NY Life filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting Falcon's termination as of October 30, 2012. The Form U5 provided, among other things, that "Falcon was terminated after admitting that he violated the company's medical underwriting procedures by providing fluid samples for three clients."
4. Falcon has not been registered with FINRA or associated with a FINRA member firm since NY Life filed the Form U5 reporting his termination.
5. Although Falcon is no longer registered or associated with a FINRA member, he 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 NY Life, namely, November 29, 2012, and (2) the Complaint charges him with failing to respond to FINRA requests to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member firm.

**FIRST CAUSE OF ACTION**  
***FAILURE TO COOPERATE WITH A FINRA INVESTIGATION***  
***VIOLATION OF FINRA RULES 8210 AND 2010***

6. The Department re-alleges and incorporates by reference paragraphs 1 through 5 above.
7. On or about December 6, 2013, the staff of FINRA's Member Regulation Department (the "Staff") began an investigation of Falcon and the circumstances leading to his termination by NY Life, including the allegations that Falcon violated his employer's



medical underwriting procedures by providing his own fluid samples instead of those from his customers (the "Investigation").

8. On December 6, 2013, as part of the Investigation, the Staff sent a letter to Falcon requesting documents and information relating to the Investigation (the "Request for Information"). The letter was sent to Falcon's residential address, as reflected in the Central Registration Depository (CRD), in Granada Hills, CA (the "CRD Address").
9. By letter dated January 20, 2014, Falcon responded to the Request for Information. In his response, under his signature line, as well as on the return envelope, Falcon provided another mailing address in Granada Hills, CA (the "Forwarding Address").

#### **FINRA'S FIRST REQUEST FOR TESTIMONY**

10. On April 21, 2014, the Staff sent a letter to Falcon requesting that he appear for an on-the-record interview at FINRA's office located at 200 Liberty Street, New York, NY 10281 on May 20, 2014 at 10:00 AM (the "First Request for Testimony").
11. Pursuant to FINRA Rule 8210, the First Request for Testimony was sent via certified mail, return receipt requested, and first class mail to the CRD Address.
12. The First Request for Testimony sent via certified mail, return receipt requested, was returned by the U.S. Postal Service and the envelope was marked as "Return to Sender, No Such Street, Unable to Forward." The Domestic Return Receipt card for the certified mailing was returned by the U.S. Postal Service unsigned.
13. The First Request for Testimony sent via first class mail was not returned by the U.S. Postal Service.
14. Falcon did not appear for his on-the-record interview on May 20, 2014.

**FINRA'S SECOND REQUEST FOR TESTIMONY**

15. On May 21, 2014, the staff sent a second letter to Falcon requesting that he appear for an on-the-record interview at FINRA's office located One World Financial Center, 200 Liberty Street, New York, NY 10281 on June 10, 2014 at 10:00 AM (the "Second Request for Testimony").
16. Pursuant to FINRA Rule 8210, the Second Request for Testimony was sent via certified mail, return receipt requested, and first class mail to the CRD Address.
17. The Second Request for Testimony sent via certified mail, return receipt requested, was returned by the U.S. Postal Service and the envelope was marked as "Return to Sender, Unclaimed, Unable to Forward." The Domestic Return Receipt card for the certified mailing was returned by the U.S. Postal Service unsigned.
18. The Second Request for Testimony sent via first class mail was not returned by the U.S. Postal Service.
19. Falcon did not appear for his on-the-record interview on June 10, 2014.

**FINRA'S THIRD REQUEST FOR TESTIMONY**

20. On June 12, 2014, the staff sent a third letter to Falcon requesting that he appear for an on-the-record interview at FINRA's office located One World Financial Center, 200 Liberty Street, New York, NY 10281 on July 1, 2014 at 10:00 AM (the "Third Request for Testimony").
21. Pursuant to FINRA Rule 8210, the Third Request for Testimony was sent via certified mail, return receipt requested, and first class mail to the CRD Address and the Forwarding Address.

22. The Third Request for Testimony sent to the CRD Address and the Forwarding Address via certified mail, return receipt requested, was returned by the U.S. Postal Service and the envelopes were marked as "Return to Sender, Unclaimed, Unable to Forward." The Domestic Return Receipt cards for the certified mailings were returned by the U.S. Postal Service unsigned.
23. The Third Request for Testimony sent to the CRD Address and the Forwarding Address via first class mail was not returned by the U.S. Postal Service.
24. Falcon did not appear for his on-the-record interview on July 1, 2014.

**FINRA'S FOURTH REQUEST FOR TESTIMONY**

25. On July 8, 2014, the staff sent a fourth letter to Falcon requesting that he appear for an on-the-record interview at FINRA's office located One World Financial Center, 200 Liberty Street, New York, NY 10281 on July 16, 2014 at 10:00 AM (the "Fourth Request for Testimony").
26. Pursuant to FINRA Rule 8210, the Fourth Request for Testimony was sent via certified mail, return receipt requested, and first class mail to the CRD Address and the Forwarding Address.
27. The Fourth Request for Testimony sent to the CRD Address via certified mail, return receipt requested, was returned by the U.S. Postal Service and the envelope was marked as "Return to Sender, Insufficient Address, Unable to Forward." The Domestic Return Receipt card for the certified mailing was not returned.
28. The Fourth Request for Testimony sent to the CRD Address via first class mail was not returned by the U.S. Postal Service.

29. The Fourth Request for Testimony sent to the Forwarding Address via certified mail, return receipt requested, and first class mail, was not returned.

30. Falcon did not appear for his on-the-record interview on July 16, 2014.

**FALCONE'S CONTINUING FAILURE TO COOPERATE**

31. To date, Falcon failed to respond to and comply with the Staff's four requests to appear for on-the-record testimony.

32. By reason of the foregoing, Falcon violated FINRA Rules 8210 and 2010.

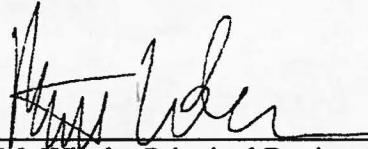
**RELIEF REQUESTED**

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Falcon 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 Falcon 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: October 1, 2014



Artur M. Wlazlo, Principal Regional Counsel  
FINRA Department of Enforcement  
Two Jericho Plaza  
Jericho, NY 11753  
Phone: (516) 949-4254  
Fax: (516) 949-4201  
e-mail: [artur.wlazlo@finra.org](mailto:artur.wlazlo@finra.org)

Lara Thyagarajan, Chief Counsel  
FINRA Department of Enforcement  
Brookfield Place  
200 Liberty Street  
New York, NY 10281  
Phone: (212) 858-4176  
Fax: (202) 721-6574  
e-mail: [lara.thyagarajan@finra.org](mailto:lara.thyagarajan@finra.org)