

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

VALENTINO INFANTE
(CRD No. 5707731),

Respondent.

Disciplinary Proceeding
No. 2013038021001

Hearing Officer—MAD

DEFAULT DECISION

December 21, 2015

Respondent is barred from associating with any member firm in any capacity for: (1) engaging in outside business activities without providing his employer with prior written notice; (2) providing false responses on an annual compliance questionnaire; and (3) failing to appear and give testimony at an on-the-record interview. Respondent also is ordered to pay restitution.

For the Complainant: Josefina Martinez, Esq., and Kevin E. Pogue, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: no appearance

DECISION

I. Introduction

Respondent Valentino Infante (“Respondent”) was formerly associated with FINRA member firm Wells Fargo Advisors LLC. While at Wells Fargo, Respondent owned an outside business and engaged in outside business activities that Wells Fargo had not approved. He also completed and submitted a compliance questionnaire in which he falsely represented to Wells Fargo that he was not engaged in any outside business activity. When Wells Fargo learned of his unapproved outside business activities, it terminated Respondent’s employment and reported the reasons for his termination to FINRA. Thereafter, FINRA began an investigation into the circumstances surrounding his termination. Respondent failed to cooperate with FINRA’s investigation by failing to appear for an on-the-record interview.

The Department of Enforcement filed a Complaint with the Office of Hearing Officers on July 13, 2015, that charged Respondent with engaging in unapproved outside business activities, submitting a false compliance questionnaire to his firm, and failing to appear for his on-the-

record interview. When Respondent did not answer or otherwise respond to the Complaint, Enforcement filed a motion for entry of default decision (“Default Motion”), together with counsel’s declaration (“Decl.”), a memorandum of law in support of the motion, and supporting exhibits. Respondent did not respond to the Default 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 entered the securities industry in 2009 and joined Wells Fargo in May 2010.¹ At Wells Fargo, Respondent was registered with FINRA as a General Securities Registered Representative. Respondent remained at Wells Fargo until it terminated his registration on August 19, 2013, because he had engaged in outside business activity and failed to disclose that business activity to the firm.² Respondent is no longer registered or associated with a FINRA member firm.³

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 failure to appear for testimony during the two-year period after the termination of his registration.

C. Origin of the Investigation

FINRA began the investigation that led to this disciplinary proceeding after it received a the Uniform Termination Notice for Securities Industry Registration (“Form U5”) Wells Fargo filed on August 19, 2013, reporting that it had discharged Respondent for “recommen d[ing] investments to a client which were not conducted through the firm and not recorded on firm books and records and fail[ing] to disclose outside business activity to the firm.”⁴

D. Respondent’s Default

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

¹ CX-2; Complaint (“Compl.”) ¶¶ 5,7.

² Compl. ¶ 7; Declaration ¶ 4; CX-1.

³ Compl. ¶ 7.

⁴ Compl. ¶ 7.

served the Notice of Complaint, Complaint, and Second Notice of Complaint on Respondent at the address obtained through the Central Registration Depository (“CRD Address”) by certified mail and first-class mail. Respondent moved to two locations in Memphis, Tennessee and informed Enforcement of both addresses (the “Memphis Addresses”).⁵ Enforcement also served Respondent at the Memphis Addresses.

Respondent did not file an answer or otherwise respond to the Complaint. Accordingly, the Hearing Officer finds that Respondent defaulted.⁶

E. Respondent Participated in Unapproved Outside Business Activities

FINRA Rule 3270 prohibits any registered person to be “an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.”

On September 18, 2012, Respondent established a limited liability company in Florida known as IMonsters Machinery (IMonsters), a heavy machinery resale business.⁷ On two separate occasions in August and October 2012, Respondent solicited PS, a Wells Fargo customer, to provide funding to purchase equipment for the business.

In the August 2012 transaction, PS authorized two wire transfers from her Wells Fargo brokerage account, totaling \$24,000, one for \$22,000 to purchase a tractor and another for \$2,000 for transportation of the tractor.⁸ The tractor was sold for approximately \$33,000.⁹ Customer PS received \$28,000 in connection with that transaction, including a \$4,000 profit, and Respondent received compensation totaling \$1,100.¹⁰

In the October 2012 transaction, PS authorized a wire transfer from her Wells Fargo brokerage account in the amount of \$34,250 to partially fund the purchase of an excavator. PS also wrote a check in the amount of \$2,550 against her Wells Fargo brokerage account to be used for the transport of the excavator.¹¹ In June 2013, PS received \$25,000 in connection with her investment in the excavator, incurring a loss of \$11,800 in the transaction. Respondent expected

⁵ In addition, an attorney called Enforcement on Respondent’s behalf to inquire whether the charges against Respondent could be resolved with a sanction short of a bar. Decl. ¶ 20; CX-8.

⁶ Respondent is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

⁷ Compl. ¶ 19. Respondent is the sole owner of IMonsters. Compl. ¶ 19.

⁸ Compl. ¶¶ 13-15.

⁹ Compl. ¶ 16.

¹⁰ Compl. ¶¶ 17-18.

¹¹ Compl. ¶¶ 24-26.

but did not receive compensation related to this transaction. Wells Fargo subsequently paid PS \$9,500 reducing her loss to \$2,300.¹²

Respondent did not obtain Wells Fargo's approval to engage in the foregoing transactions. Thus, I conclude that Respondent violated FINRA Rule 3270. By violating Rule 3270, Respondent also violated Rule 2010.

F. Respondent Made False Statement on Annual Compliance Questionnaire

On May 6, 2013, Respondent completed his 2013 compliance questionnaire as required by Wells Fargo. One of the questions asked, "Are you currently engaged in any outside activity either as a proprietor, partner, officer, director, trustee, employee, agent or otherwise?" Although IMonsters was an active corporation in Florida and Respondent was the sole owner of IMonsters at the time,¹³ Respondent answered, "No."¹⁴

Based on the foregoing, I conclude that Respondent falsely answered a question that probed his involvement in an outside business activity and that he thereby violated FINRA Conduct Rule 2010. Respondent's false response is inconsistent with the "high standards of commercial honor" and "just and equitable principles of trade" that FINRA Conduct Rule 2010 requires registered representatives to observe.

G. Respondent Failed to Respond to Requests for Information

FINRA Rule 8210(a) provides, in relevant part, that FINRA "shall have the right to require a member, person associated with a member, or person subject to FINRA's jurisdiction to provide information...and to testify at a location specified by FINRA staff...with respect to any matter involved in the investigation, complaint, examination, or proceeding."

On January 5, 2015, pursuant to FINRA Procedural Rule 8210, Enforcement sent a letter to Respondent requesting that he appear for an on-the-record interview on January 8, 2015, and provide testimony in connection with Enforcement's investigation of the alleged misconduct.¹⁵ On January 8, 2015, Respondent appeared to provide testimony.¹⁶ During the interview, Respondent requested counsel and Enforcement adjourned the interview.¹⁷ On February 17, 2015, Enforcement sent a letter to Respondent's CRD Address and his Memphis Addresses, requesting that he appear and testify on March 5, 2015.¹⁸ Respondent did not appear on March 5,

¹² Compl. ¶¶ 27-28.

¹³ Compl. ¶ 19.

¹⁴ Compl. ¶¶ 35-36.

¹⁵ Compl. ¶ 45.

¹⁶ Compl. ¶ 47.

¹⁷ Compl. ¶ 47.

¹⁸ Compl. ¶ 48.

2015.¹⁹ Enforcement sent a second letter to Respondent requesting that he appear and testify on March 31, 2015.²⁰ Again, Respondent did not appear.²¹

The Hearing Officer finds that Respondent failed to appear and provide testimony requested by FINRA related to its investigation of the violations. By failing to provide testimony, Respondent violated FINRA Rules 8210 and 2010.

III. Sanctions

A. Outside Business Activities

The FINRA Sanction Guidelines (“Guidelines”) governing outside business activities recommend a fine of \$2,500 to \$73,000, and a suspension of up to 30 business days where there are no aggravating circumstances.²² Where the outside business activities involve aggravating circumstances, the Guidelines recommend consideration of a suspension of up to one year. In egregious cases involving substantial activity or significant injury, the Guidelines recommend consideration of a longer suspension or a bar.²³

Under the facts of this case, the relevant principal considerations in determining sanctions for engaging in outside business activities in violation of FINRA Rule 3270 include: (i) whether the outside activity involved customers of the firm; (ii) whether the outside activity resulted directly or indirectly in injury to customers of the firm and if so, the nature and extent of the injury; and the duration of the outside activity; and (iii) whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm. Respondent solicited a customer to provide funds for his outside business. One of the business transactions led to the customer losing more than \$11,000. As noted above, Respondent made false statements on his firm’s annual questionnaire in connection to his outside business activity. The record contains no mitigating factors.

After consideration of these factors, the Hearing Officer finds that Respondent’s conduct was egregious. The appropriate sanction for his violation of FINRA Rules 3270 and 2010 is a bar from associating with any FINRA member in all capacities.

The Hearing Officer also concludes that Respondent should pay \$2,300 in restitution to PS.

¹⁹ Compl. ¶ 53.

²⁰ Compl. ¶¶ 56-58.

²¹ Compl. ¶ 59.

²² FINRA Sanction Guidelines at 13 (2015), <http://www.finra.org/SanctionGuidelines>.

²³ *Id.*

B. False Statements on Compliance Questionnaire

Respondent falsely reported that he did not participate in any outside business activities on his annual compliance questionnaire, in violation of FINRA Rule 2010. The most analogous Guideline for this violation is "Forgery and/or Falsification of Records," which recommends consideration of a bar, as well as a fine, in egregious cases. The record reflects no mitigating factors that would warrant a lesser sanction. Respondent's conduct was intentional,²⁴ designed to deceive Wells Fargo and prevent it from learning of Respondent's outside business activities. The Hearing Officer finds that a bar is the appropriate sanction under the facts and circumstances of this case.

C. Failure to Provide Testimony

The Guidelines provide that for violations of Rule 8210 a bar is appropriate when an individual provides a partial but incomplete response unless the person demonstrates that the information provided substantially complied with all aspects of the request.²⁵ Here, Respondent appeared and gave partial testimony to Enforcement; however, the on-the-record interview was adjourned before Respondent completed his testimony. Enforcement thereafter sent Respondent two requests under Rule 8210 that required him to appear and complete his testimony. Respondent failed to appear both times. There are no mitigating factors. Accordingly, I conclude that the appropriate sanction for this violation is a bar.

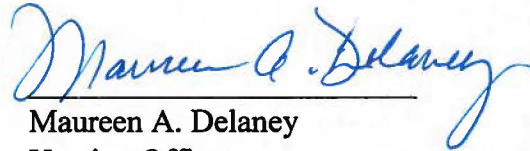
IV. Order

Respondent Valentino Infante is barred from associating with any member firm in any capacity for: (1) engaging in outside business activities without providing his employer with written notice, in violation of FINRA Conduct Rules 3270 and 2010; (2) providing false responses on an annual compliance questionnaire, in violation of FINRA Rule 2010; and (3) failing to provide testimony to FINRA, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

²⁴ *Id.* at 7 (Principle Consideration No. 13).

²⁵ Guidelines at 33.

Respondent also is ordered to pay restitution to PS in the amount of \$2,300, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from July 1, 2013, until paid.²⁶ Restitution shall be due and payable immediately upon this Default Decision becoming FINRA's final action in this proceeding.



Maureen A. Delaney
Hearing Officer

Copies to:

Valentino Infante (via first-class mail)
Josefina Martinez, Esq. (via email and first-class mail)
Jeffrey D. Pariser, Esq. (via email)

²⁶ 26 U.S.C. § 6621(a)(2). The interest rate the Internal Revenue Service uses to determine interest due on underpaid taxes is adjusted each quarter and reflects market conditions. PS is identified in the addendum to this decision, which is served only on the parties

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**ADDENDUM TO DEFAULT DECISION
DATED DECEMBER 21, 2015**

Customer PS: Paula Santa