

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DARRELL W. MIKULENCAK
(CRD No. 2661351),

Respondent.

Disciplinary Proceeding
No. 2013037950901

Hearing Officer-KBW

DEFAULT DECISION

March 6, 2015

Respondent is barred from associating with any member firm in any capacity for the unauthorized use of a notary public's seal and forging the notary public's signature, in violation of FINRA Rule 2010. Respondent is also barred from associating with any member firm in any capacity for failing to appear and testify at two on-the-record interviews, in violation of FINRA Rules 8210 and 2010.

Appearances

Adam B. Walker, Esq., for the Department of Enforcement.

No appearance by or on behalf of Darrell W. Mikulencak.

DECISION

I. Introduction

FINRA's Department of Enforcement filed the attached Complaint with the Office of Hearing Officers on September 15, 2014. The Complaint charges that Respondent Darrell W. Mikulencak (1) violated FINRA Rule 2010¹ by making unauthorized use of a notary public's seal and forging the notary public's signature on documents associated with broker-dealer accounts and (2) violated FINRA Rules 8210 and 2010 by failing to provide testimony in connection with a related investigation.

Respondent failed to answer or otherwise respond to the Complaint. On January 5, 2015, Enforcement filed a Motion for Entry of Default Decision and a supporting Memorandum of Law (collectively, "Default Motion"), together with the Declaration of Adam Walker in Support

¹ FINRA's Rules are available at <http://finra.complinet.com/>.

of the Department of Enforcement's Motion for Entry of Default Decision ("Walker Decl.") and exhibits marked CX-1 through CX-9.

II. Findings of Fact and Conclusions of Law

A. Mikulencak's Background and Origin of Investigation

Mikulencak entered the securities industry in 2001.² In 2012, he joined First Brokerage America ("First Brokerage") as a registered representative.³

In August 2013, First Brokerage filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that "Mikulencak was found to have forged a notary seal and notary signature on client documents."⁴ FINRA then commenced the investigation that led to this disciplinary proceeding.⁵

B. Jurisdiction

FINRA has jurisdiction over this disciplinary 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 Mikulencak's registration with a member firm in August 2013, and (2) the first cause of action charges him with misconduct that commenced while he was associated with a member firm and the second cause of action charges him with failing to respond to requests for information during the two-year period after the termination of his registration.

C. Service of the Complaint and Mikulencak's Default

On September 15, 2014, Enforcement served the Complaint and Notice of Complaint by certified mail (return receipt requested) and first-class mail to Mikulencak's most current address as reflected in the Central Registration Depository ("CRD address").⁶ At that time, Enforcement had no knowledge of any other address for Mikulencak.⁷ The Notice of Complaint stated that Mikulencak was required to file and serve an Answer to the Complaint no later than October 13, 2014.⁸ Mikulencak did not file an Answer or other response by that date.⁹

² Compl. ¶ 3.

³ Compl. ¶ 3.

⁴ Walker Decl. ¶ 3; CX-1, at 3.

⁵ Walker Decl. ¶ 3.

⁶ Walker Decl. ¶ 6; CX-2.

⁷ Walker Decl. ¶ 6.

⁸ CX-2, at 1-2.

⁹ Walker Decl. ¶ 7.

On October 23, 2014, Enforcement served the Complaint and a Second Notice of Complaint by certified mail (return receipt requested) and first-class mail to Mikulencak's CRD address and to another potential address for Mikulencak that Enforcement had found through a public records search.¹⁰ The Second Notice of Complaint stated that Mikulencak was required to file and serve an Answer to the Complaint no later than November 21, 2014.¹¹ Mikulencak has not filed an Answer or other response to the Complaint.¹²

FINRA staff properly served Mikulencak with a copy of the Complaint, and Mikulencak received valid constructive notice of this proceeding. Mikulencak defaulted by failing to file an Answer by the deadline set forth in the Second Notice of Complaint. Accordingly, the allegations in the attached Complaint are deemed admitted pursuant to FINRA Rules 9215(f) and 9269(a).

D. First Cause of Action – Unauthorized Use of Notary Public's Seal and Forgery of Notary Public's Signature, in Violation of FINRA Rule 2010

In 2013, two of Mikulencak's customers, JM and DV, had possession of stock certificates that needed to be re-registered following the death of the certificates' previous owners. In June 2013, to assist JM in re-registering stock certificates, Mikulencak forged the signature of a notary public on a document and placed the notary public's seal on the document.¹³ On or about July 26, 2013, to assist DV in re-registering stock certificates, Mikulencak again forged the signature of the notary public on a document and placed the notary public's seal on the document.¹⁴ On or about July 27, 2013, Mikulencak again placed the notary public's seal on a document for DV.¹⁵ At no time, did Mikulencak obtain permission or have authority either to sign the name of the notary public or to use the notary public's seal.¹⁶

In forging the signature of a notary public and making unauthorized use of the notary public's seal, Mikulencak violated FINRA Rule 2010.¹⁷

¹⁰ Walker Decl. ¶ 8; CX-3.

¹¹ CX-3, at 1.

¹² Walker Decl. ¶ 9.

¹³ Compl. ¶ 7.

¹⁴ Compl. ¶ 8.

¹⁵ Compl. ¶ 8.

¹⁶ Compl. ¶¶ 6-9.

¹⁷ *Donald M. Bickerstaff*, Exchange Act Release No. 35607, 1995 SEC LEXIS 982 (Apr. 17, 1995) (finding that forgery constituted a violation of Article III, Section 1 of NASD's Rules of Fair Practice, the predecessor to NASD Conduct Rule 2110).

E. Second Cause of Action – Failure to Appear for Testimony, in Violation of FINRA Rules 8210 and 2010

As part of its investigation into allegations of forgery by Mikulencak, FINRA staff requested in September 2013 that Mikulencak provide a signed, dated statement responding to the Form U5 that First Brokerage had filed regarding Mikulencak's termination. Mikulencak responded to this request with a written statement regarding one of the incidents in which he had used a notary public's seal and signed her name.¹⁸

During its investigation, FINRA staff learned of the other two incidents in which Mikulencak made unauthorized use of the notary public's seal. FINRA staff determined that it was important to obtain information from Mikulencak regarding these three incidents. Accordingly, FINRA staff sent a letter in February 2014 to Mikulencak requiring him to appear and to testify pursuant to FINRA Rule 8210 at an on-the-record interview ("OTR") in FINRA's Kansas City District Office. Mikulencak responded by emailing FINRA staff that because of an unexpected emergency he would not be able to appear for the OTR. Mikulencak did not appear for the OTR as requested.¹⁹

In March 2014, FINRA staff sent another letter to Mikulencak requiring him to appear and to testify pursuant to FINRA Rule 8210 at an OTR in FINRA's Kansas City District Office. Mikulencak emailed FINRA staff and stated that he had decided against meeting with FINRA staff in Kansas City. Mikulencak's email did not offer any reasons for his decision. Mikulencak did not appear for the OTR as requested.²⁰

The Securities and Exchange Commission has stressed that FINRA Rule 8210 is vitally important in connection with "FINRA's 'obligation to police the activities of its members and associated persons.'"²¹ FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide information requested by FINRA with respect to any matter involved in a FINRA investigation.²² Accordingly, members and associated persons must cooperate fully in providing requested information.²³ Because FINRA lacks subpoena power, it "must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate."²⁴

¹⁸ Walker Decl. ¶¶ 14, 15; CX-8, at 1.

¹⁹ Compl. ¶ 12; CX-4; CX-5; CX-9; Walker Decl. ¶¶ 16-18.

²⁰ Compl. ¶ 13; CX-6.

²¹ See *John Joseph Plunkett*, Exchange Act Release No. 73124, 2014 SEC LEXIS 3396, at *17 (Sept. 16, 2014), (quoting *Gregory Evans Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *43 (Apr. 17, 2014)).

²² *Dep't of Enforcement v. Reichman*, No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *28-29 (NAC July 21, 2011).

²³ See *Michael David Borth*, 51 S.E.C. 178, 180 (1992).

²⁴ *Plunkett*, 2014 SEC LEXIS 3396, at *17 (quoting *Goldstein*, 2014 SEC LEXIS 1350, at *43).

As demonstrated by Mikulencak's emails informing FINRA staff that he would not appear for the requested OTRs, Mikulencak received the February and March testimony requests. In failing to appear for an OTR in response to the February and March testimony requests, Mikulencak violated FINRA Rule 8210. In violating FINRA Rule 8210, Mikulencak also violated FINRA Rule 2010.²⁵

III. Sanctions

A. First Cause of Action – Unauthorized Use of Notary Public's Seal and Forgery of Notary Public's Signature, in Violation of FINRA Rule 2010

For forgery and falsification of documents, the FINRA Sanction Guidelines ("Guidelines") recommend a fine of \$5,000 to \$100,000 and, where mitigating factors exist, a suspension for up to two years or, in egregious cases, a bar.²⁶ Mikulencak's misconduct was egregious and warrants a bar. Mikulencak made unauthorized use of a notary public's seal at least three times and forged the notary public's signature at least twice over the course of approximately six weeks. Mikulencak engaged in the misconduct at issue within months of FINRA sanctioning Mikulencak for submitting falsified documents to his firm; in March 2013, Mikulencak entered into a Letter of Acceptance, Waiver, and Consent that sanctioned Mikulencak for knowingly submitting documents to his firm that contained false addresses for customers who had moved to states in which Mikulencak was not licensed.²⁷ In addition, it is a misdemeanor under Missouri law to willfully impersonate a notary public.²⁸

B. Second Cause of Action – Failure to Appear for Testimony, in Violation of FINRA Rules 8210 and 2010

Because Mikulencak responded to the September request for information and failed to appear for testimony in response to the February and March OTR request, the Hearing Officer applies the Guidelines for a partial, but incomplete, response.²⁹ For an associated person who provides a partial but incomplete response to a FINRA request for information, the Guidelines provide that "a bar is standard unless the person can demonstrate that the information provided

²⁵ *Plunkett*, 2014 SEC LEXIS 3396, at *3 n.3 (stating in the context of a Rule 8210 violation that "[a] violation of FINRA rules constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of FINRA Rule 2010.").

²⁶ *Guidelines* at 23.

²⁷ *Darrell Wayne Mikulencak*, AWC No. 2011026089701 (Mar. 2013).

²⁸ R.S. Mo. § 486.375.

²⁹ FINRA staff did not allege that Mikulencak's response to the September request was inadequate or untimely. Accordingly, for the purpose of this Decision, it is assumed that Mikulencak responded fully and timely to this request.

substantially complied with all aspects of the request.”³⁰ The Guidelines also recommend a fine of \$10,000 to \$50,000 for a partial but incomplete response.³¹

For providing a partial but incomplete response to a FINRA Rule 8210 request, the Guidelines direct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the importance from FINRA’s perspective of the information requested that was not provided, whether the information that was provided was relevant and responsive to the request; the number of requests made, the time respondent took to respond, the degree of regulatory pressure required to obtain a response; and whether respondent thoroughly explained valid reasons for the deficiencies in the response.³²

A bar is the appropriate sanction for Mikulencak’s violations of FINRA Rules 8210 and 2010. Mikulencak’s failure to provide the requested OTR testimony prevented FINRA from obtaining important information regarding the extent of, and reasons for, Mikulencak’s violative conduct.³³ Mikulencak has not demonstrated that his response to the September request provided substantially all of the information that FINRA staff sought to obtain in the OTRs. Rather, the information that FINRA staff sought but did not obtain was important from FINRA’s perspective. In his response to the September request for information, Mikulencak had acknowledged one incident of forgery and unauthorized use of the notary public’s seal. The subsequent requests for an OTR sought more detail regarding the one incident and information regarding other incidents.³⁴ In addition, Mikulencak twice failed to appear for an OTR. Furthermore, Mikulencak offered no valid reason for not attending the second OTR requested.

IV. Order

Darrell W. Mikulencak violated FINRA Rule 2010, by making unauthorized use of a notary public’s seal and forging the notary public’s signature, and failing to appear and testify at two on-the-record interviews, in violation of FINRA Rules 8210 and 2010. For each cause of action, Mikulencak is barred from associating with any member firm in any capacity. The bars will become effective immediately if this default decision becomes FINRA’s final action in this disciplinary proceeding.



Kenneth Winer
Hearing Officer

³⁰ Guidelines at 33.

³¹ Guidelines at 33.

³² Guidelines at 33.

³³ Walker Decl. ¶ 19.

³⁴ Walker Decl. ¶¶ 17-18.

Copies to:

Darrell W. Mikulencak (*via overnight courier and first-class mail*)

Adam B. Walker, Esq. (*via email and first-class mail*)

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

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Darrell W. Mikulencak (CRD No. 2661351),

Respondent.

DISCIPLINARY PROCEEDING
No. 20130379509

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In 2013, while registered with First Brokerage America, Mikulencak made unauthorized use of a notary public's seal and forged the notary's signature on various documents associated with broker-dealer accounts. This conduct violated FINRA Rule 2010.
2. On February 12, 2014 and March 4, 2014, FINRA staff sent Mikulencak letters requesting his appearance, pursuant to FINRA Rule 8210, for on-the-record ("OTR") interviews scheduled for February 27, 2014 and March 10, 2104, respectively, in the Kansas City District Office. FINRA served Mikulencak with these letters according to the requirements of FINRA Rule 8210. Mikulencak failed to appear for both OTRs. This conduct violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Mikulencak entered the securities industry in February 2001 as a registered representative of a FINRA broker-dealer. From December 2012 until August 9, 2013, he was registered with First Brokerage America, L.L.C., as a general securities representative. Since then, Mikulencak has not been registered with any FINRA member.
4. Although Mikulencak 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 FirstBrokerage America, L.L.C. ("FBA") – namely, August 12, 2013 – and because (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to appear for OTRs during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

Forgery

(FINRA Rule 2010)

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. In the summer of 2013, two of Mikulencak's customers had possession of stock certificates that needed to be re-registered following the death of the certificates' previous owners. Effectuating re-registration required each customer to complete paperwork. In some cases, this paperwork included an "Affidavit of Domicile"

regarding the state in which the deceased resided at the time of his or her death. Other customers had to complete and submit paperwork concerning their appointment as Attorney-in-Fact for the deceased.

7. On or about June 20, 2013, while working from a bank branch in Owensville, Missouri, Mikulencak forged the signature of EF, a bank employee and a notary public, on an Affidavit of Domicile for JM, a brokerage customer. Mikulencak also placed EF's notary seal onto the same document. Mikulencak used the document to assist JM in re-registering stock certificates following the death of the certificates' previous owner.
8. On or about July 26, 2013, in an effort to assist DV, a brokerage customer, in re-registering stock certificates following the death of the certificates' previous owner, Mikulencak forged EF's signature and placed EF's notary seal on an affidavit concerning DV's durable Power of Attorney concerning the decedent. On or about July 27, 2013, Mikulencak placed EF's notary seal on an Affidavit of Domicile for DV.
9. At no time did Mikulencak obtain permission or have the authority either to sign EF's name or to use EF's notary seal in connection with the above documents or for any other purpose.
10. By forging a notary's signature and making unauthorized use of a notary public's seal, Mikulencak violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Failure to appear for testimony
(FINRA Rules 8210 and 2010)

11. The Department realleges and incorporates by reference paragraphs 1 through 10 above.
12. On or about February 12, 2014, and pursuant to FINRA Rule 8210, FINRA staff sent a letter to Mikulencak requiring him to appear and to testify at an OTR scheduled for February 27, 2014, in FINRA's Kansas City District Office. The staff requested the OTR as part of its investigation into allegations of forgery by Mikulencak. The letter was sent by Certified Mail and First-Class U.S. Mail to the residential address then listed for Mikulencak in the Central Registration Depository (CRD). On February 26, 2014, Mikulencak emailed Bryan Varvel, an examiner in FINRA's Kansas City District Office, and stated that he was unable to appear for the OTR scheduled for February 27, 2014. Mikulencak did not appear for the scheduled OTR.
13. On or about March 4, 2014, FINRA staff again sent a letter to Mikulencak requiring him to appear and to testify at an OTR rescheduled for March 10, 2014 in FINRA's Kansas City District Office. Pursuant to FINRA Rule 8210, the letter was sent to the residential address then listed for Mikulencak in the Central Registration Depository (CRD) and was sent by both Certified Mail and First-Class U.S. Mail. On March 8, 2014, Mikulencak emailed Bryan Varvel and stated that he had decided against appearing for the March 10, 2014 OTR. Mikulencak did not, in fact, appear for the OTR on March 10, 2014.

14. By failing to appear for the OTRs, Mikulencak violated FINRA Rules 8210 and 2010.

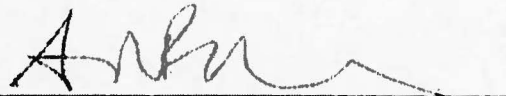
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Mikulencak 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 Mikulencak 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: Sep. 15, 2014


Adam B. Walker, Senior Regional Counsel
FINRA Department of Enforcement
120 W. 12th Street, 8th floor
Kansas City, Missouri 64131
Phone (816) 421-5700 / Fax: (816) 421-4519
e-mail: adam.b.walker@finra.org