

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL R. ROSALIA
(CRD No. 2323953),

Respondent.

Disciplinary Proceeding
No. 2019060753508

Hearing Officer–BDC

DEFAULT DECISION

October 15, 2024

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

Appearances

For the Complainant: Michael Dorfman-Gonzalez, Esq., and Adam Balin, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a Complaint against Respondent Michael R. Rosalia alleging that he failed to appear and provide testimony that FINRA requested in connection with an investigation into Rosalia’s alleged excessive and unsuitable trading in his customers’ accounts. As a result, the Complaint alleged, Rosalia violated FINRA Rules 8210 and 2010. When Rosalia failed to answer the Complaint, the original Hearing Officer in this matter ordered Enforcement to file a motion for entry of a default decision supported by a memorandum of law and a declaration.¹

On September 9, 2024, Enforcement filed its motion for entry of a default decision (“Default Motion”) along with a memorandum of law, a declaration from Enforcement Senior

¹ The Chief Hearing Officer reassigned this matter to me on August 13, 2024.

Counsel Michael Dorfman-Gonzalez (“Dorfman-Gonzalez Decl.”), and 27 exhibits (CX-1 through CX-27) in support of the Default Motion. Rosalia did not respond to the Default Motion.

For the reasons set forth below, I grant the Default Motion, deem the allegations in the Complaint admitted, and bar Rosalia from associating with any FINRA member firm in any capacity.

II. Findings of Fact and Conclusions of Law

A. Rosalia’s Background

Rosalia first became registered with FINRA through his association with a FINRA member firm in June 1993.² He was registered as a General Securities Representative and General Securities Principal through his association with Worden Capital Management (“Worden Capital”) from December 2015 to April 2021.³ He was registered as a General Securities Representative, General Securities Principal, and Investment Banking Representative through his association with SW Financial (“SWF”) from April 2021 to August 29, 2022, when SWF filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating Rosalia’s registration through the firm.⁴

B. FINRA’s Jurisdiction

Rosalia has not been associated with a FINRA member firm since August 29, 2022.⁵ In February 2023, FINRA suspended Rosalia from associating with any FINRA member in all capacities due to his failure to comply with a December 2022 arbitration award entered against him.⁶ Although he is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA’s By-Laws because (1) Enforcement filed the Complaint within two years of the effective date of the Form U5 that terminated Rosalia’s association with a member firm, and (2) the Complaint charges him with failing to appear for on-the-record testimony requested by FINRA, pursuant to Rule 8210, within two years of the termination of his registration.⁷

C. Origin of the Investigation

FINRA commenced an investigation of Rosalia during a routine examination of Worden Capital after learning of Rosalia’s potentially excessive and unsuitable trading in at least five of

² Complaint (“Compl.”) ¶ 2; Dorfman-Gonzalez Decl. ¶ 6; CX-2.

³ Compl. ¶ 3; Dorfman-Gonzalez Decl. ¶ 6; CX-2.

⁴ Compl. ¶ 4; Dorfman-Gonzalez Decl. ¶¶ 6, 7; CX-2 at 4, 17.

⁵ Compl. ¶ 6; Dorfman-Gonzalez Decl. ¶ 7; CX-2.

⁶ Compl. ¶ 8; Dorfman-Gonzalez Decl. ¶ 8; CX-4.

⁷ Compl. ¶ 9; Dorfman-Gonzalez Decl. ¶ 9.

his customers' accounts between May 2016 and August 2022.⁸ As part of its investigation, FINRA staff requested, pursuant to Rule 8210, that Rosalia appear for on-the-record testimony via videoconference.⁹

D. Respondent Defaulted by Failing to Answer the Complaint

Under FINRA Rules 9131(b) and 9134(a)(2) and (b)(1), a Complaint may be served on a natural person by United States Postal Service (“USPS”) first-class certified mail at the person’s residential address as reflected in the Central Registration Depository (“CRD”). If the serving party has actual knowledge that the person’s CRD address is outdated, then the serving party may serve duplicate copies at the person’s last known residential address and the business address in CRD of the entity with which the person is employed or affiliated.¹⁰

Enforcement served Rosalia with the First Notice of Complaint and Complaint on June 20, 2024,¹¹ and the Second Notice of Complaint and Complaint on July 19, 2024.¹² In each case, Enforcement served Rosalia by USPS first-class certified mail, return receipt requested, at his last known residential address recorded in CRD and an address in Sayville, New York, that Rosalia provided to Enforcement during its investigation.¹³ Enforcement also sent courtesy copies of the First and Second Notices of Complaint and Complaint to an email address that Rosalia provided.¹⁴ Accordingly, Enforcement served the Complaint in accordance with FINRA’s applicable rules.

Pursuant to FINRA Rule 9215, Rosalia was required to file an Answer or otherwise respond to the Complaint by August 5, 2024. He did not respond. As a result, I find Rosalia in default and deem the allegations in the Complaint admitted under FINRA Rules 9215(f) and 9269(a)(2).¹⁵

⁸ Compl. ¶¶ 1, 16; Dorfman-Gonzalez Decl. ¶ 4.

⁹ Compl. ¶ 17; Dorfman-Gonzalez Decl. ¶ 5; CX-1, 5–18.

¹⁰ See FINRA Rule 9134(b)(1).

¹¹ Dorfman-Gonzalez Decl. ¶ 25.

¹² Dorfman-Gonzalez Decl. ¶ 32.

¹³ Dorfman-Gonzalez Decl. ¶¶ 25, 32; CX-16; CX-17; CX-22; CX-23. Enforcement also sent the First and Second Notices of Complaint and Complaint to both addresses via FedEx. CX-18; CX-19; CX-24; CX-25. At the times Enforcement served the First and Second Notices of Complaint and Complaint, Rosalia was not associated with a FINRA member firm so Enforcement was unable to send duplicate copies of the Complaint to a business address. See Dorfman-Gonzalez Decl. ¶¶ 24, 33.

¹⁴ Dorfman-Gonzalez Decl. ¶¶ 25, 32; CX-20; CX-27.

¹⁵ Rosalia is notified that he may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

E. Governing Law

The Complaint charges Rosalia with violating FINRA Rule 8210. This rule requires persons subject to FINRA’s jurisdiction to provide information to FINRA upon request for the purpose of an investigation, complaint, examination, or proceeding.¹⁶ Rule 8210(a)(2) authorizes FINRA to “inspect and copy the books, records, and accounts” of persons subject to its jurisdiction “with respect to any matter involved in [an] investigation . . . that is in such . . . person’s possession, custody, or control.” Rule 8210(c) provides that “[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.”

Constructive notice of the request, not actual notice of it, “is all that FINRA Rule 8210 demands.”¹⁷ Under Rule 8210, a formerly registered person is deemed to have received a FINRA Rule 8210 request if it was mailed or otherwise transmitted to their “last known residential address . . . as reflected in [CRD].”¹⁸ If the FINRA staff responsible for sending the request actually knows “that the address in [CRD] is out of date or inaccurate” and knows of another “more current address,” then it must also mail or transmit a copy of the request to that other address.¹⁹

Rule 8210 “is at the heart of the self-regulatory system for the securities industry.”²⁰ It “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”²¹ The rule “is unequivocal and grants FINRA broad authority to obtain information concerning an associated person’s securities-related business ventures.”²² Associated persons must cooperate fully in providing FINRA with

¹⁶ FINRA Rule 8210(a), (c).

¹⁷ *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *36 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

¹⁸ FINRA Rule 8210(d).

¹⁹ *Id.*

²⁰ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App’x 692 (2d Cir. 2009).

²¹ *Id.* (quoting *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831, at *7 (July 19, 1993)).

²² *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

information.²³ It is therefore a violation of Rule 8210 for a person to fail to provide information sought by FINRA.²⁴

Rosalia is also charged with violating FINRA Rule 2010, which requires a FINRA member “in the conduct of its business” to “observe high standards of commercial honor and just and equitable principles of trade.”²⁵ This Rule also applies to persons associated with a member, as they “have the same duties and obligations as a member under the Rules.”²⁶ It is well established that “[a] violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010.”²⁷

F. Rosalia Failed to Provide Testimony Requested Under FINRA Rule 8210

1. First Testimony Request

On January 3, 2024, FINRA staff sent Rosalia a letter pursuant to Rule 8210 requesting that he appear for on-the-record testimony by videoconference on February 1 and 2, 2024, in connection with FINRA’s investigation into potential excessive and unsuitable trading in customer accounts (“the First Testimony Request”).²⁸ Enforcement sent the First Testimony Request via USPS certified mail, return receipt requested, and first-class mail to Rosalia’s last known residential address in CRD.²⁹ The certified mailing was returned to FINRA because there was “No Authorized Recipient Available,” and the first-class mailing was not returned to FINRA.³⁰

On January 22, 2024, FINRA staff spoke to Rosalia by telephone and informed him that he was scheduled to appear for on-the-record testimony on February 1 and 2, 2024.³¹ During the

²³ See *CMG Inst’l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (member firms and their associated persons have an obligation to respond to FINRA’s request for information “fully and promptly”). See also *Dep’t of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20 (NAC May 15, 2019) (Rule 8210 “requires associated persons to comply fully with FINRA’s requests for information, testimony, and documents with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.”).

²⁴ See *Dep’t of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *20 (NAC May 26, 2021) (respondent violated Rule 8210 by failing to produce his Internal Revenue Service wage and income transcript), *appeal docketed*, No. 3-20380 (SEC July 1, 2021).

²⁵ FINRA Rule 2010.

²⁶ FINRA Rule 0140(a).

²⁷ *Dep’t of Enforcement v. DiPaola*, No. 2018057274302, 2023 FINRA Discip. LEXIS 4, at *37 n.18 (NAC Mar. 23, 2023) (citing *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *41 n.49 (Sept. 24, 2015)), *appeal docketed*, No. 3-21402 (SEC May 1, 2023).

²⁸ Compl. ¶ 17; Dorfman-Gonzalez Decl. ¶ 10; CX-1, at 5–18.

²⁹ Compl. ¶ 18; Dorfman-Gonzalez Decl. ¶ 11; CX-1, at 5.

³⁰ Compl. ¶¶ 19, 20; Dorfman-Gonzalez Decl. ¶ 11; CX-5.

³¹ Compl. ¶ 21; Dorfman-Gonzalez Decl. ¶ 12.

call, Rosalia advised FINRA staff that he had moved to a new residential address in Sayville, New York (“the Sayville Address”), and provided the staff with that address and an email address.³² On that same day, FINRA staff sent a copy of the First Testimony Request to Rosalia’s email address.³³ On January 25, 2024, Rosalia confirmed via email that he received the First Testimony Request.³⁴ Rosalia did not appear for testimony on February 1, 2024, nor did he request an extension of the testimony date.³⁵ After Rosalia failed to appear for testimony, FINRA staff spoke with Rosalia by telephone and he informed the staff that he also would not appear for testimony on February 2, 2024.³⁶

2. Second Testimony Request

On February 2, 2024, FINRA staff sent Rosalia a second letter pursuant to Rule 8210 requesting that he appear for on-the-record testimony by videoconference on February 23 and 28, 2024 (“the Second Testimony Request”).³⁷ Enforcement sent the Second Testimony Request via certified mail, return receipt requested, to the CRD address and the Sayville Address, and by first-class mail to the CRD address.³⁸ Enforcement also sent a copy to Rosalia’s email address.³⁹ The Second Testimony Request letters sent via certified mail to the CRD Address and the Sayville Address were returned to FINRA, and the letter sent via first-class mail to Rosalia’s CRD Address was not returned.⁴⁰ On February 20, 2024, Rosalia responded to the FINRA staff’s email containing the Second Testimony Request and informed the staff that he would not appear for testimony on February 23 and 28, 2024.⁴¹

3. Third Testimony Request

On March 25, 2024, FINRA staff sent Rosalia a third letter pursuant to Rule 8210 requesting that he appear for on-the-record testimony by videoconference on April 18, 2024 (“the Third Testimony Request”).⁴² Enforcement sent the Third Testimony Request via certified mail, return receipt requested, and first-class mail to Rosalia’s CRD address and the Sayville

³² Compl. ¶ 22; Dorfman-Gonzalez Decl. ¶ 12.

³³ Compl. ¶ 23; Dorfman-Gonzalez Decl. ¶ 13; CX-6.

³⁴ Compl. ¶ 23; Dorfman-Gonzalez Decl. ¶ 13; CX-7.

³⁵ Compl. ¶ 24; Dorfman-Gonzalez Decl. ¶ 14; CX-8.

³⁶ Compl. ¶ 25; Dorfman-Gonzalez Decl. ¶ 15.

³⁷ Compl. ¶ 26; Dorfman-Gonzalez Decl. ¶ 16; CX-1, at 3–4.

³⁸ Compl. ¶ 27; Dorfman-Gonzalez Decl. ¶ 17; CX-1, at 3–4.

³⁹ Compl. ¶ 27; Dorfman-Gonzalez Decl. ¶ 17; CX-1, at 3–4.

⁴⁰ Compl. ¶¶ 28, 29, 30; Dorfman-Gonzalez Decl. ¶ 18. Based on the USPS tracking information, it appears that the letter sent to the CRD address was forwarded to the Sayville Address before being returned to FINRA. *See* CX-10.

⁴¹ Compl. ¶ 31; Dorfman-Gonzalez Decl. ¶ 19; CX-9.

⁴² Compl. ¶ 32; Dorfman-Gonzalez Decl. ¶ 20; CX-1, at 1–2.

Address, and sent a copy to Rosalia’s email address.⁴³ The certified mailing of the Third Testimony Request sent to Rosalia’s CRD address was “Delivered, Left with Individual” on April 1, 2024, after it was forwarded to an address in Sayville, New York.⁴⁴ The certified mailing sent to the Sayville Address was returned to FINRA on May 1, 2024, and the first-class mailings were not returned.⁴⁵ Rosalia did not appear for testimony, nor did he request an extension of the testimony date.⁴⁶

G. Rosalia Violated FINRA Rules 8210 and 2010 by Failing to Appear for Testimony

FINRA properly served the Second and Third Testimony Requests pursuant to the service provisions of FINRA Rule 8210(d). Enforcement mailed or otherwise transmitted the requests to (1) Rosalia’s last known residential address as reflected in CRD and (2) the Sayville Address Rosalia provided to Enforcement during its investigation.⁴⁷ As a result, I deem Rosalia to have received constructive notice of those requests.⁴⁸ I further find that Rosalia received actual notice of the First and Second Testimony Requests because he acknowledged receipt of them in emails to the FINRA staff.

By failing to appear for testimony as directed by the three requests, Rosalia violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA’s Sanction Guidelines (“Guidelines”) recommend that if an individual does not respond in any manner to a request made pursuant to Rule 8210, a bar should be standard.⁴⁹ The Principal Consideration in determining sanctions for failing to respond in any manner to a request made under Rule 8210 is the “importance of the information requested as viewed from FINRA’s perspective.”⁵⁰

Between January and March 2024, in connection with its investigation of Rosalia and pursuant to Rule 8210, Enforcement sent Rosalia three requests to appear for on-the-record

⁴³ Compl. ¶ 33; Dorfman-Gonzalez Decl. ¶ 21; CX-1; CX-12.

⁴⁴ Compl. ¶ 34; Dorfman-Gonzalez Decl. ¶ 22; CX-13 (the house number is not referenced in the USPS tracking information).

⁴⁵ Compl. ¶¶ 35, 36; Dorfman-Gonzalez Decl. ¶ 22; CX-14.

⁴⁶ Compl. ¶ 37; Dorfman-Gonzalez Decl. ¶ 23; CX-15.

⁴⁷ Compl. ¶¶ 27, 33; Dorfman-Gonzalez Decl. ¶¶ 17, 21.

⁴⁸ *Dep’t of Enforcement v. Felix*, No. 2020065128501, 2022 FINRA Discip. LEXIS 13, at*16 (NAC Oct. 13, 2022) (“Because FINRA properly served the FINRA Rule 8210 requests, Felix is deemed to have received them. See FINRA Rule 8210(d).”), *aff’d*, Exchange Act Release No. 100662, 2024 SEC LEXIS 1860 (Aug. 6, 2024).

⁴⁹ Guidelines at 93 (2024), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

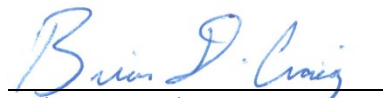
⁵⁰ *Id.*

testimony via videoconference but Rosalia either failed to appear or informed Enforcement he would not appear. Rosalia's testimony was material to Enforcement's investigation into whether Rosalia engaged in excessive and unsuitable trading in his customers' accounts.⁵¹ Because he failed to provide testimony, Enforcement was unable to obtain Rosalia's explanations on, among other things, whether he considered his customers' investment profiles when making recommendations and whether his recommendations were consistent with his customers' investment objectives and risk tolerance.⁵² Enforcement maintains that Rosalia's failure to appear for on-the-record testimony impeded its investigation.⁵³

Considering the foregoing, and because I find there are no mitigating factors, the appropriate sanction is a bar in all capacities. In light of the bar, I do not also impose a fine.⁵⁴

IV. Order

Enforcement's Default Motion is **GRANTED**. For violating FINRA Rules 8210 and 2010 by failing to appear for testimony as required by FINRA Rule 8210, Respondent Michael R. Rosalia is barred from associating with any FINRA member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Brian D. Craig
Hearing Officer

Copies to:

Michael R. Rosalia (via email, overnight courier, and first-class mail)
Michael Dorfman-Gonzalez, Esq. (via email)
Adam Balin, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

⁵¹ Compl. ¶ 38; Dorfman-Gonzalez Decl. ¶ 46.

⁵² Dorfman-Gonzalez Decl. ¶ 46.

⁵³ Compl. ¶ 39; Dorfman-Gonzalez Decl. ¶ 46.

⁵⁴ Guidelines at 9 (Technical Matters) ("Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss."). The record in this case did not demonstrate customer loss.