

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EUGENE CHARLES GIAQUINTO
(CRD No. 4059014),

Respondent.

Disciplinary Proceeding
No. 2010023935002

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

May 16, 2014

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

Appearances

For the Department of Enforcement, Complainant, Michael J. Dixon, Esq., and Perry Hubbard, Esq.

Eugene Charles Giaquinto, Respondent, pro se.

DECISION

Eugene Charles Giaquinto was formerly registered with FINRA and associated with Lightspeed Trading, LLC. In August 2012, FINRA staff was investigating whether individuals associated with Lightspeed were operating unregistered broker-dealers and improperly sharing commissions with unregistered individuals, in violation of Section 15(a) of the Securities Exchange Act of 1934, NASD Rule 2420, and FINRA Rule 2010. In addition, the staff was investigating possible unlawful trading activity using accounts affiliated with an unregistered entity Giaquinto owned. In connection with the investigation, FINRA staff sought information from Giaquinto because he was suspected to have operated one of the unregistered broker-dealers identified in the investigation. In the course of the investigation, Giaquinto provided

partial responses to the staff's requests for information and then refused to appear for an on-the-record interview.

Enforcement filed a complaint with the Office of Hearing Officers, charging Giaquinto with violating FINRA Rules 8210 and 2010. FINRA Rule 8210 grants FINRA staff the right to require a person subject to FINRA's jurisdiction to provide information with respect to any matter involved in an investigation, complaint, examination, or proceeding. FINRA Rule 2010 requires persons associated with FINRA member firms to observe high standards of commercial honor and just and equitable principles of trade.

I. Procedural History

Enforcement initiated this disciplinary proceeding on November 13, 2013, by filing and serving the Complaint and Notice of Complaint on Giaquinto. Giaquinto did not respond to the Complaint, and Enforcement then served him with a Second Notice of Complaint on December 12, 2013.

On December 30, 2013, the Office of Hearing Officers received an email from Giaquinto in response to the Complaint, denying the allegations in the Complaint. The Hearing Officer accepted the email as his Answer.

The Hearing Officer held an Initial Pre-Hearing Conference with the parties on February 5, 2014, and scheduled the case for hearing. The Hearing Officer also ordered Giaquinto to file an Amended Answer with the Office of Hearing Officers no later than February 14, 2014. However, on February 17, 2014, the Office of Hearing Officers received an email from Giaquinto explaining that he was "withdrawing" from the proceeding. He explained that he would never again seek employment in the financial services industry; therefore it would be a waste of time to participate further.

After receiving this email, the Hearing Officer scheduled another pre-hearing conference with the parties for March 5, 2014. Giaquinto did not appear at the pre-hearing conference. Accordingly, the Hearing Officer entered an order finding him in default and setting a deadline for Enforcement to file a motion for entry of a default decision.

Enforcement filed a Motion for Entry of Default Decision on April 2, 2014.¹ Giaquinto has not responded to the motion.

For the reasons discussed below, the Hearing Officer grants Enforcement's motion and concludes that Giaquinto should be barred from associating with any FINRA member firm in any capacity.

II. Jurisdiction

Giaquinto was last registered with FINRA as a General Securities Representative from January 2010 until December 2011.² Although he 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-Laws³ because (1) the Complaint was filed within two years after Giaquinto's last registration terminated, and (2) the Complaint charges him with failing to respond to comply with requests for testimony that FINRA staff issued during the two-year period following the termination of his FINRA registration.

III. Findings Of Fact

The Hearing Officer treated the allegations in the attached Complaint as admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

¹ The motion is supported by the Declaration of Michael Dixon, attorney for Enforcement, and eight exhibits.

² Ex. 1, at 4 (CRD record).

³ See Article V, Sec. 4(a), FINRA By-Laws, *available* at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

A. Eugene Charles Giaquinto

Giaquinto was associated with Lightspeed between January 2010 and December 2011. On December 5, 2011, Lightspeed terminated Giaquinto and filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA on his behalf.⁴

B. Failure To Attend On-The-Record Interview

In 2012, Enforcement and FINRA's Department of Market Regulation sent Giaquinto Rule 8210 requests that he provide information and documents relating to their investigation into whether certain persons registered with Lightspeed were operating unregistered broker-dealers and sharing commissions with unregistered persons, and whether improper trading activity had taken place through the unregistered broker-dealers. Giaquinto provided partial responses to these requests for information.⁵

To complete the investigation, FINRA staff sought to interview Giaquinto under oath. Accordingly, on August 29, 2012, FINRA staff sent him a letter, pursuant to FINRA Rule 8210, directing him to appear for an on-the-record interview on September 19, 2012, at FINRA's offices in New York City.⁶ On September 11, 2012, the staff sent Giaquinto another letter, which changed the starting time of the interview on September 19, 2012.⁷

By emails dated September 11 and 14, 2012,⁸ Giaquinto acknowledged receipt of the Rule 8210 request and informed the staff that he would not attend the on-the-record interview on September 19, 2012.⁹ Giaquinto explained that he could not afford to have an attorney represent him at the FINRA on-the-record interview and requested that the transcript of his deposition

⁴ The record does not reflect why Lightspeed terminated Giaquinto's employment.

⁵ Compl. ¶¶ 4, 7.

⁶ Ex. 2.

⁷ Ex. 3.

⁸ Ex. 4; Ex. 5.

⁹ Compl. ¶ 12; Ex. 4; Ex. 5.

taken by the Securities and Exchange Commission “be counted as [his] on the record interview for FINRA.”¹⁰ He also said that he was willing to cooperate, but he had given all of his documents to his attorneys during the SEC’s investigation. Therefore, he could not now produce the documents the staff requested. Giaquinto did not appear for the interview on September 19, 2012.¹¹

On October 1, 2012, FINRA staff sent Giaquinto a second Rule 8210 request letter, directing him to appear for an on-the-record interview at FINRA’s offices in New York City on October 22, 2012.¹² Giaquinto responded to the request by emails dated October 11 and 18, 2012.¹³ Once again, Giaquinto stated that he did not have an attorney to represent him at an on-the-record interview.¹⁴ Giaquinto did not appear for the interview on October 22, 2012.¹⁵

FINRA staff was unable to complete its investigation into Giaquinto’s activities because he refused to appear and testify under oath at an on-the-record interview.¹⁶

IV. Conclusions Of Law

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, complaint, examination, or proceeding. Because FINRA lacks subpoena power, it must rely upon FINRA Rule 8210 “to police the activities of its members and associated persons.”¹⁷ “The failure

¹⁰ Ex. 4.

¹¹ Compl. ¶ 13.

¹² Ex. 6.

¹³ Ex. 7; Ex. 8.

¹⁴ As an alternative, Giaquinto offered to speak to the staff “off the record.” Ex. 8.

¹⁵ Compl. ¶ 16.

¹⁶ Michael Dixon Decl. ¶14.

¹⁷ *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998).

to respond to [FINRA] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets."¹⁸

Members and associated persons must cooperate fully in providing requested information,¹⁹ and "may not ignore [FINRA] inquiries ... nor take it upon themselves to determine whether information is material to [a FINRA] investigation of their conduct."²⁰ An associated person's refusal to respond to a request made pursuant to FINRA Rule 8210 also violates FINRA Rule 2010.²¹

In August 2012, FINRA staff had questions concerning Giaquinto's involvement with trading being conducted with or through unregistered entities that were conducting business as broker-dealers. To obtain this needed information, and because Giaquinto had not provided complete responses to the staff's Rule 8210 requests for information and documents, the staff twice scheduled Giaquinto for an on-the-record interview. Giaquinto received the Rule 8210 request letters, but he refused to cooperate. Instead, Giaquinto offered to answer questions "off the record" or, in the alternative, he pointed the staff to his SEC deposition testimony, which he offered as a substitute.

Giaquinto's prior partial responses to FINRA's information and document requests do not excuse his failure to appear and testify at an on-the-record interview. The staff sought his sworn testimony for the very reason that his earlier responses did not provide all of the information needed to complete the investigation. Nor was it permissible for Giaquinto to offer his SEC deposition transcript as a substitute. Accordingly, the Hearing Officer concludes that

¹⁸ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

¹⁹ See *Michael David Borth*, 51 S.E.C. 178, 180 (1992).

²⁰ *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009).

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

Giaquinto violated Rules 8210 and 2010 by failing to appear and testify at the on-the-record interview.

V. Sanctions

For failing to respond in any manner to a Rule 8210 request for information, the FINRA Sanction Guidelines provide that a bar should be the standard sanction.²² When an associated person provides a partial but incomplete response to a FINRA request for information, the Sanction Guidelines provide that “a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.”²³ Because Giaquinto responded in part to the FINRA’s earlier requests for information and documents, but refused to appear for the follow-up interview in connection with the same investigation, the Hearing Officer applies the Sanction Guidelines for a partial, but incomplete, response.

For providing a partial but incomplete response to a FINRA Rule 8210 request, the Sanction Guidelines direct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the importance of the information requested that was not provided from FINRA’s perspective and whether the information that was provided was relevant and responsive to the request; the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and whether the respondent thoroughly explained valid reasons for the deficiencies in the response.²⁴

Because Enforcement did not take issue with Giaquinto’s partial responses to the Rule 8210 requests for information and documents, the Hearing Officer must assume that the information he provided was relevant and responsive, albeit incomplete. Nevertheless, the

²² FINRA SANCTION GUIDELINES 33 (2011), *available at* www.finra.org/sanctionguidelines.

²³ *Id.* The Sanction Guidelines also recommend a fine of \$10,000 to \$50,000. *Id.*

²⁴ *Id.*

Hearing Officer concludes that the importance of the information requested, Giaquinto's invalid reason for attending his on-the-record interview, and the fact that the Staff intended to question Giaquinto about possible violations that were not covered by the earlier Rule 8210 requests, warrant that he be barred.

First, the information requested was extremely important to FINRA. The staff was investigating allegations of fraudulent trading patterns, including wash and matched trades and "spoofing" or "layering." In "layering," a trader places orders with no intention of having them executed but rather to trick others into buying or selling a stock at an artificial price driven by the orders that the trader later cancels. Such illegal activity harms investors and the securities market.

Second, Giaquinto lacked a valid reason for refusing to appear and testify at an on-the-record interview. An individual cannot condition his cooperation on his ability to retain an attorney to represent him in the investigation.

The Hearing Officer further concludes that a respondent's otherwise unjustified refusal to appear and provide sworn testimony in the course of an investigation is not mitigated by the respondent's earlier responses to requests for documents and information. The two investigative tools—requests for unsworn written responses and requests for testimony under the penalties of perjury—are not interchangeable, and a respondent who is the subject of an investigation does not have the right to select the format in which he will provide requested information.

For all of the foregoing reasons, the Hearing Officer bars Giaquinto in all capacities for his violations of FINRA Rules 8210 and 2010.

VI. Order

Eugene Charles Giaquinto is barred from associating with any member firm in any capacity for failing to appear for on-the-record testimony, in violation of Rules 8210 and 2010.

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



Andrew H. Perkins
Hearing Officer

Copies to:

Eugene Charles Giaquinto (*via first-class mail and e-mail*)

Michael J. Dixon, Esq. (*via first-class mail and e-mail*)

Perry Hubbard, Esq. (*via e-mail*)

Jeffrey D. Pariser, Esq. (*via e-mail*)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

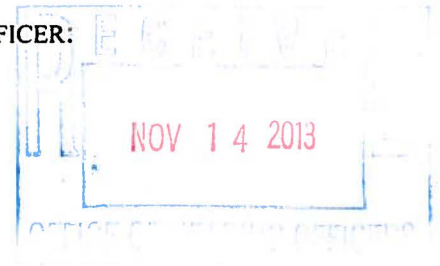
v.

EUGENE C. GIAQUINTO (CRD 4059014),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010023935002

HEARING OFFICER:



COMPLAINT

The Department of Enforcement alleges:

Summary

1. Respondent Eugene C. Giaquinto ("Giaquinto" or "Respondent") failed to appear for an on-the-record interview, in violation of FINRA Rules 8210 and 2010.

Respondent and Jurisdiction

2. Giaquinto was first registered from 1999 to 2001 as a General Securities Representative, General Securities Principal, and Equity Trader Limited Representative with Heartland Securities Corp. After associating briefly with a second firm, in November 2003, he registered with Lightspeed Trading, LLC ("Lightspeed") on January 4, 2010 as a General Securities Representative. Giaquinto was registered with Lightspeed until December 5, 2011, when the firm filed a Form U5 ending his registration. He has not been registered since then.

3. Although Respondent 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 Lightspeed, namely, December 5, 2011; and (2) the Complaint charges him with failing 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.

Facts

4. The Department of Enforcement conducted an investigation into whether certain persons registered with Lightspeed were operating unregistered broker-dealers and sharing commissions with unregistered persons, among other possible misconduct, in violation of Section 15(a) of the Securities Exchange Act of 1934 and NASD Rule 2420 and FINRA Rule 2010. The staff also was investigating certain suspicious trading that may have taken place through the potential unregistered broker-dealers.

5. As a result of the investigation, the staff identified Giaquinto as a person who may have operated an unregistered broker-dealer.

6. The staff identified certain traders and retail customers associated with this apparent unregistered broker-dealer who may have been engaged in suspicious securities transactions, including wash trades, pre-arranged trades, and spoofing or layering through their accounts at Lightspeed.

7. Giaquinto provided partial cooperation to the staff by producing documents and other information during 2012, in response to FINRA Rule 8210 requests.

8. To successfully complete its investigation, the staff also sought to formally interview Giaquinto on the record, pursuant to FINRA Rule 8210.

CAUSE ONE

Giaquinto Failed to Attend His On-the-Record Interview (Violations of FINRA Rules 8210 and 2010)

9. The preceding paragraphs of this Complaint are re-alleged here.

10. On August 29, 2012, FINRA staff sent Giaquinto a letter, pursuant to FINRA Rule 8210, requesting that he appear for an on-the-record interview on September 19, 2012 at FINRA's offices in New York City. The letter was sent to Giaquinto's CRD address, pursuant to FINRA Rule 8210, via certified mail, return receipt requested, and via email. The return receipt was returned to FINRA and showed that "E.G." signed for the letter on August 31, 2012.

11. On September 11, 2012, the staff sent Giaquinto another letter confirming the September 19, 2012 date of the on-the-record interview in New York City, but changing the starting time of the interview. The letter was sent to Giaquinto's CRD address via certified mail, return receipt requested, and email. FINRA did not receive the return receipt. U.S. Postal Service tracking records confirm that the letter was delivered on September 13, 2012.

12. In emails to the staff on September 11 and 14, 2012, Giaquinto acknowledged receiving notice of the September 19, 2012 on-the-record interview. In the emails, Giaquinto said he would not attend the interview.

13. Giaquinto did not appear for the September 19, 2012 on-the-record interview.

14. On October 1, 2012, FINRA staff again noticed Giaquinto for an on-the-record interview, pursuant to FINRA Rule 8210, at FINRA's offices in New York City, for October 22, 2012. The letter was sent to Giaquinto's CRD address, pursuant to FINRA Rule 8210, via certified mail, return receipt requested, and via email. FINRA did not receive the return receipt. USPS tracking records show that the October 1, 2012 letter was delivered on October 4, 2012.

15. In emails to the staff on October 11 and 18, 2012, Giaquinto acknowledged receiving notice of the October 22, 2012 on-the-record interview. In the emails, Giaquinto said he would not attend the interview.

16. Giaquinto did not attend the October 22, 2012 on-the-record interview.

17. By failing to attend his on-the-record interview, Giaquinto violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

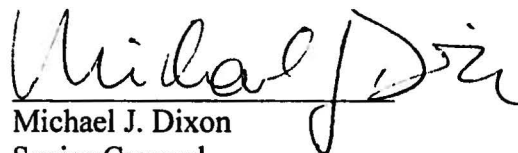
WHEREFORE, the Department respectfully requests that the Panel:

A. make findings of fact and conclusions of law that 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.

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



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November 13, 2013