

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRIAN MICHAEL SEIFERT  
(CRD No. 4547658),

Respondent.

Disciplinary Proceeding  
No. 2012033920601

**DEFAULT DECISION**

Hearing Officer - KBW

December 16, 2014

**Respondent failed to provide testimony in connection with a FINRA investigation, in violation of FINRA Rules 8210 and 2010. Respondent is barred from associating with any member firm in any capacity.**

**Appearances**

William L. Thompson III, Esq., for the Department of Enforcement.

No appearance by or on behalf of Brian Michael Seifert, Respondent.

**DECISION**

**I. Introduction**

On July 31, 2014, the Department of Enforcement ("Enforcement") filed a complaint with the Office of Hearing Officers. On August 14, 2014, Enforcement filed the Amended Complaint with the Office of Hearing Officers. The Amended Complaint alleged the same facts and the same causes of action as the original Complaint, namely that, during June 2014, Respondent Brian Michael Seifert ("Seifert") twice failed to appear for scheduled on-the-record testimony requested pursuant to FINRA Rule 8210, in violation FINRA Rules 8210 and 2010.

Enforcement served Seifert with the Amended Complaint in accordance with FINRA's Code of Procedure, and Seifert failed to file an Answer. Accordingly, on October 31, 2014, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), together with the

Declaration of William L. Thompson, III in Support of Motion for Entry of Default Decision (“Thompson Decl.”), and eleven exhibits CX-1 to CX-11.

For the reasons set forth below, the Hearing Officer finds Seifert in default, grants Enforcement’s Default Motion and deems the allegations of the Amended Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

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

### **A. Seifert’s Background**

In 2002, Seifert entered the securities industry and obtained his Series 63 license.<sup>1</sup> In 2003, Seifert became registered as an Investment Company Products and Variable Contracts Representative (Series 6).<sup>2</sup>

Seifert became associated with FINRA member firm Country Capital Management Company (“CCMC”) in March 2008.<sup>3</sup> On August 9, 2012, CCMC filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) disclosing Seifert’s voluntary termination.<sup>4</sup> On August 31, 2012, CCMC filed a Form U5 Amendment disclosing an internal review into “allegations that [Seifert] forged and/or falsified customer information with affiliated insurance company” and that “evidence was found supporting allegations [Seifert] falsified customer information and forged documents.”<sup>5</sup> Seifert has not since been registered or associated with any FINRA member.<sup>6</sup>

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<sup>1</sup> Thompson Decl. ¶ 7.

<sup>2</sup> Thompson Decl. ¶ 7.

<sup>3</sup> CX-1, at 1.

<sup>4</sup> Amended Compl. ¶ 4.

<sup>5</sup> Thompson Decl. ¶ 6; CX-1, at 6.

<sup>6</sup> Thompson Decl. ¶ 10; CX-2, at 4.

## **B. Jurisdiction**

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws, because (1) Enforcement filed (a) the Complaint on July 31, 2014, which was within two years after the effective date of the termination of Seifert's registration with the firm and (b) the Amended Complaint on August 14, 2014, which was within two years of the filing of the Form U5 Amendment on August 31, 2012; and (2) both the Complaint and the Amended Complaint allege that Seifert failed to appear for on-the-record testimony in response to a request by FINRA staff pursuant to FINRA Rule 8210 during the two years following his termination.<sup>7</sup>

## **C. Origin of Investigation**

Enforcement's investigation of Seifert began after CCMC filed the Form U5 Amendment. Enforcement's investigation led to this disciplinary proceeding.

## **D. Service of the Complaint**

On July 31, 2014, Enforcement attempted to serve Respondent with a Complaint and Notice of Complaint. However, due to a clerical error, the Complaint and Notice of Complaint were not sent to Respondent's residential address as reflected in the Central Registration Depository ("Seifert's CRD address").<sup>8</sup>

On August 14, Enforcement sent a copy of the Amended Complaint and Amended Notice of Complaint by first-class certified mail to Seifert's CRD address.<sup>9</sup> The Amended Notice of Complaint required Seifert to file an answer no later than September 11, 2014.<sup>10</sup> On August 29,

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<sup>7</sup> See Article V, Sec. 5(a), FINRA By-Laws, [www.finra.org/Rules](http://www.finra.org/Rules) (then follow the "FINRA Manual" hyperlink to "Corporate Organization: By-Laws.").

<sup>8</sup> Thompson Decl. at 12 n.9.

<sup>9</sup> Thompson Decl. ¶ 13 and 14.

<sup>10</sup> Thompson Decl. ¶ 17.

2014, the U.S. Postal Service returned to Enforcement a return receipt showing that the Amended Complaint and Amended Notice of Complaint were delivered and signed for at Seifert's CRD address on August 29, 2014.<sup>11</sup>

On September 10, 2014, Seifert contacted Enforcement by telephone. Seifert acknowledged (1) receipt of the Amended Complaint and Amended Notice of Complaint and (2) his obligation to file an answer no later than September 11, 2014.<sup>12</sup> Seifert also stated that he did not intend to answer the Amended Complaint or otherwise participate in the proceeding.<sup>13</sup>

Seifert did not file an answer to the Amended Complaint by September 11, 2014.<sup>14</sup> On September 15, 2014, Enforcement sent a copy of the Second Notice of Complaint, attaching the Amended Complaint and Amended Notice of Complaint, by first-class certified mail to Seifert's CRD address.<sup>15</sup> The Second Notice of Complaint required Seifert to file an answer to the Amended Complaint by no later than October 2, 2014. Seifert did not file an answer to the Amended Complaint as of October 31, 2014.<sup>16</sup>

#### **E. Seifert's Default**

The Hearing Officer finds that Seifert received notice of the Amended Complaint in this proceeding. Accordingly, the Hearing Officer finds that Seifert defaulted by failing to file an Answer to the Amended Complaint. Therefore, the Hearing Officer deems the allegations in the attached Amended Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

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<sup>11</sup> Thompson Decl. ¶ 16; CX-5.

<sup>12</sup> Thompson Decl. ¶ 18.

<sup>13</sup> Thompson Decl. ¶ 18.

<sup>14</sup> Thompson Decl. ¶ 19.

<sup>15</sup> Thompson Decl. ¶ 20.

<sup>16</sup> Thompson Decl. ¶ 23.

## **F. Seifert's Failure to Appear and Testify in Response to Requests for On-The-Record Testimony**

FINRA staff conducted an investigation into, among other things, whether Seifert forged documents and falsified insurance customer information.<sup>17</sup> In connection with this investigation, Pursuant to FINRA Rule 8210, Enforcement sent to Seifert four requests for information. The Complaint alleges that Seifert violated FINRA Rule 8210 by failing to provide testimony in response to third and fourth requests.

### **1. First Request**

On September 17, 2012, FINRA staff sent a letter ("first request") to Seifert requesting, pursuant to FINRA Rule 8210, that Seifert provide (1) a signed statement in response to the allegations in the Form U5 Amendment that Seifert forged and/or falsified customer information with CCMC's affiliated insurance company and (2) copies of all correspondence and memoranda referring to related to this matter.<sup>18</sup> The first request also (1) asked whether there were any other complaints regarding Seifert's employment at CCMC, which were open or were resolved within the preceding three years of the date of the current reportable event, and (2) requested additional documentation if there were such other complaints.<sup>19</sup>

By letter dated September 24, 2012, Seifert responded that (1) he was aware of the allegations made in the Form U5 Amendment, (2) the Form U5 Amendment was "the only information [he] had received in regards to this matter," and (3) he was not aware of any other complaints filed against him at CCMC during the prior three years.<sup>20</sup>

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<sup>17</sup> Amended Complaint ¶ 9.

<sup>18</sup> Thompson Decl. ¶ 26; CX-8.

<sup>19</sup> CX-8.

<sup>20</sup> Thompson Decl. ¶ 27; CX-9.

## **2. Second Request**

On October 5, 2012, FINRA sent an email (“second request”) to Seifert requesting, pursuant to FINRA Rule 8210, that Seifert “provide a statement addressed to FINRA in response to the allegations that [he] forged and/or falsified customer information with [CCMC’s] affiliated insurance company.”<sup>21</sup>

By letter dated October 10, 2012, Seifert responded that he had received “additional information” from CCMC “with more specific details of the allegations” and was attaching a copy of that letter to his October 10, 2012, response. Seifert commented that “there are no allegations being made specific to securities related products. Many of the items listed in [CCMC’s] letter have had a significant amount of time lapse since the occurrences in question.” Seifert added that, because he no longer had access to file notes and policy documentation, he had been “advised by [his] attorney to not make any formal statements in regards [sic] to these allegations, until more detailed information can be obtained.”<sup>22</sup>

## **3. Third Request**

On May 12, 2014, FINRA staff sent a letter (“third request”) to Seifert requesting, pursuant to FINRA Rule 8210, that Seifert appear on June 10, 2014, so that the staff could take his testimony by oral examination.<sup>23</sup> The FINRA staff sent the third request by certified mail, return receipt requested, and by FedEx to Seifert’s CRD address.<sup>24</sup>

FINRA staff received (1) an email confirmation from FedEx that the third request was delivered on May 13, 2014, to Seifert’s CRD address and (2) the certified mail reply receipt with

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<sup>21</sup> Thompson Decl. ¶ 28; CX-10.

<sup>22</sup> Thompson Decl. ¶ 29; CX-11.

<sup>23</sup> Amended Complaint ¶ 9.

<sup>24</sup> Amended Complaint ¶ 10.

an illegible signature dated May 15, 2014.<sup>25</sup> On or around May 13, 2014, Seifert called the staff, acknowledged receipt of the third request, told the staff that he did not plan to attend the testimony scheduled for June 10, 2014, and did not request to reschedule the testimony.<sup>26</sup>

On June 10, 2014, Seifert did not appear for his scheduled testimony.<sup>27</sup> Seifert also did not seek any adjournment of such testimony.<sup>28</sup>

#### **4. Fourth Request**

On June 10, 2014, FINRA staff sent a letter (“fourth request”) to Seifert requesting, pursuant to FINRA Rule 8210, that Seifert appear on June 24, 2014, so that the staff could take his testimony upon oral examination.<sup>29</sup> The FINRA staff sent the fourth request by certified mail, return receipt requested, and by FedEx to Seifert’s CRD address.<sup>30</sup>

The FINRA staff received (1) an email confirmation from FedEx that the fourth request was delivered on June 11, 2012, to Seifert’s CRD address and (2) the certified mail reply receipt with the signature and printed name of “Jackie Seifert” dated June 14, 2014.<sup>31</sup>

Seifert did not appear for his scheduled testimony on June 24, 2014.<sup>32</sup> Seifert also did not seek any adjournment of such testimony.<sup>33</sup> As of July 31, 2014, the date of the Complaint, Seifert had not appeared for the requested on the record testimony.<sup>34</sup>

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<sup>25</sup> Amended Complaint ¶ 10.

<sup>26</sup> Amended Complaint ¶ 11.

<sup>27</sup> Amended Complaint ¶ 12.

<sup>28</sup> Amended Complaint ¶ 12.

<sup>29</sup> Amended Complaint ¶ 13.

<sup>30</sup> Amended Complaint ¶ 14.

<sup>31</sup> Amended Complaint ¶ 14.

<sup>32</sup> Amended Complaint ¶ 15.

<sup>33</sup> Amended Complaint ¶ 15.

<sup>34</sup> Amended Complaint ¶ 16.

### **III. Discussion**

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. FINRA Rule 8210(c) provides, in part, that no person shall fail to provide testimony pursuant to FINRA Rule 8210. FINRA Rule 8210(a) provides, in part, that for the purpose of an investigation, FINRA staff shall have the right to require a person subject to FINRA's jurisdiction to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or notary public if requested, with respect to any matter involved in the investigation.

FINRA Rule 8210(d) specifies, "notice under this Rule shall be deemed received by the member or currently or formerly registered person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository."<sup>35</sup>

Accordingly, the Hearing Officer concludes that Seifert received the third request, received notice of the fourth request, and violated FINRA Rule 8210 by failing to respond to FINRA's requests for testimony.<sup>36</sup> His violation of Rule 8210 is also a violation of Rule 2010.<sup>37</sup>

### **IV. Sanctions**

For cases involving failure to respond to a FINRA Rule 8210 Request, the FINRA Sanction Guidelines ("Guidelines") advise that "[i]f an individual did not respond in any manner,

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<sup>35</sup> FINRA Rule 8210(d).

<sup>36</sup> The Amended Complaint did not charge that Seifert violated FINRA Rule 8210 and 2010 with respect to his responses to the first request and the second request. Accordingly, this Decision does not address whether Seifert violated FINRA Rule 8210 with respect to the first two requests.

<sup>37</sup> See *John Joseph Plunkett*, Exchange Act Release No. 73124, 2014 SEC LEXIS 3396, at \*3 n.3 (Sept. 16, 2014) (stating in the context of a violation of FINRA Rule 8210 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.").



a bar should be standard.”<sup>38</sup> The Guidelines further provide, “Where the individual provided 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>39</sup>

The Guidelines list a number of principal considerations for adjudicators to assess in determining appropriate sanctions. For a failure to respond, the Guidelines instruct adjudicators to consider the importance of the information requested from FINRA's perspective. For a partial response, adjudicators are instructed to consider (1) the importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request, (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response, and (3) whether the respondent thoroughly explains valid reasons for the deficiencies in the response.<sup>40</sup>

Seifert has not demonstrated that his responses to the first and second requests constitute substantial compliance with the requests that he appear for testimony. Seifert provided only limited information in response to the first and second requests.<sup>41</sup> He did not, for example, state whether he had forged or falsified customer information.<sup>42</sup>

The information sought by the third and fourth requests was important; Enforcement was investigating serious allegations, and Seifert's failure to appear and provide testimony prevented Enforcement staff from questioning Seifert about those allegations and gaining information

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<sup>38</sup> Guidelines 33 (2013), available at [www.finra.org/Industry/Enforcement/SanctionGuidelines](http://www.finra.org/Industry/Enforcement/SanctionGuidelines).

<sup>39</sup> Guidelines 33.

<sup>40</sup> Guidelines 33.

<sup>41</sup> Thompson Decl. ¶¶ 26-29; CX-8, CX-9, CX-10, and CX-11.

<sup>42</sup> Although the Amended Complaint did not charge that Seifert violated FINRA Rule 8210 and 2010 with respect to the first request and the second request, it is appropriate to consider the requests, and Seifert's responses, in assessing sanctions.

regarding whether the allegations were correct. Seifert's failure to appear and testify therefore impeded Enforcement's investigation.<sup>43</sup> Seifert did not appear for testimony in response to two letters requesting that he appear and provide testimony. Seifert has offered no valid reason for not appearing and providing testimony.

Accordingly, Seifert is barred from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

**V. Order**

Respondent Brian Michael Seifert is barred from associating with any member firm in any capacity for failing to provide testimony, in violation of FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.



Kenneth Winer  
Hearing Officer

Copies to: Brian Michael Seifert (*via overnight courier and first-class mail*)  
Jennifer Schulp, Esq. (*via electronic and first-class mail*)  
William L. Thompson, III, Esq. (*via electronic and first-class mail*)  
Jeffrey D. Pariser, Esq. (*via electronic mail*)

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<sup>43</sup> Thompson Decl. ¶ 34.

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

Department of Enforcement,

Complainant,

v.

Brian Michael Seifert  
(CRD No. 4547658),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2012033920601

**AMENDED COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Brian Seifert twice failed to appear for scheduled on-the-record testimony requested pursuant to FINRA Rule 8210 during June 2014.
2. Seifert's failures to appear for on-the-record testimony violated FINRA Rule 8210, which requires FINRA members and associated persons to provide information and to testify with respect to any matter involved in a FINRA investigation. Seifert's conduct also violated FINRA Rule 2010.

**RESPONDENT AND JURISDICTION**

3. Seifert first became registered with a FINRA member firm in 2002 as a Series 63 (Uniform Securities Agent State Law Examination). Seifert obtained his Series 6 (Investment Company Products/Variable Contracts Representative) in April 2003.

Seifert was registered with two different FINRA member firms before becoming registered in both capacities on March 18, 2008, through FINRA member Country Capital Management Company (“CCMC”), a subsidiary of Country Financial. Seifert was simultaneously employed by an affiliated insurance group, also a subsidiary of Country Financial, while working for CCMC.

4. On August 9, 2012, CCMC filed a Form U5 disclosing Seifert’s voluntary termination.
5. On August 31, 2012, CCMC filed an amended Form U5 disclosing an internal review of Seifert by CCMC’s affiliated insurance group into “allegations that the representative forged and/or falsified customer information with the affiliated insurance company.” The internal review concluded that “[e]vidence was found supporting allegations the representative falsified customer information and forged documents.”
6. Although Seifert 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 amended Form U5 filed for Seifert on August 31, 2012; and (2) the Complaint charges Seifert with failing to appear for on-the-record testimony during the two-year period after the filing of an amendment to Form U5.

CAUSE OF ACTION  
(Failure to Cooperate)  
FINRA Rules 8210 and 2010

7. The Department re-alleges and incorporates by reference paragraphs 1- 6 above.

8. FINRA Rule 8210 requires associated persons “to provide information orally, in writing or electronically . . . and 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 . . . .”
9. In connection with FINRA’s investigation related to, among other things, whether Seifert forged documents and falsified insurance customer information, on May 12, 2014, FINRA staff sent a letter to Seifert pursuant to FINRA Rule 8210, requesting that Seifert appear at FINRA’s offices in Rockville, Maryland on June 10, 2014, so that the staff could take his testimony upon oral examination.
10. The May 12 letter was sent by Certified Mail, return receipt requested, and by FedEx to Seifert’s last residential address as reflected in the Central Registration Depository (“CRD”). The staff received an e-mailed confirmation from FedEx that the letter was delivered to Seifert’s CRD address on May 13. The staff also received the Certified Mail reply card with an illegible signature dated May 15, 2014.
11. On or around May 13, Seifert called the staff and acknowledged receiving the May 12 letter. At that time, he told the staff that he did not plan to attend the testimony scheduled for June 10, and did not request that the testimony be rescheduled.
12. On June 10, Seifert failed to appear for his scheduled testimony at FINRA’s offices and did not seek any adjournment of such testimony.
13. On June 10, the staff sent a second letter to Seifert pursuant to FINRA Rule 8210, requesting that Seifert appear at FINRA’s offices in Rockville, Maryland on June 24, 2014, so that the staff could take his testimony upon oral examination.

14. The June 10 letter was also sent by Certified Mail, return receipt requested, and by FedEx to Seifert's last residential address as reflected in CRD. On June 11, the staff received an e-mailed confirmation from FedEx that the scheduling letter was delivered to Seifert's CRD address on June 11. The staff also received the Certified Mail reply card dated June 14, 2014 with the signature and printed name of "Jackie Seifert."
15. On June 24, Seifert failed to appear for his scheduled testimony at FINRA's offices. Seifert did not seek to postpone the date of his testimony, nor did he explain to the staff his failure to appear.
16. As of the date of this Complaint, Seifert has not appeared for the requested on-the-record testimony in accordance with FINRA Rule 8210.
17. As a result of the foregoing conduct, Seifert 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; and
- 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**

Date: August 14, 2014

  
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