

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES BRETT STUART
(CRD No. 3022149),

Respondent.

Disciplinary Proceeding
No. 2019062948102

Hearing Officer–RES

DEFAULT DECISION

March 15, 2024

Respondent is barred from associating with any FINRA member firm in any capacity for failing to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA Rules; for failing to reasonably supervise trading in customer accounts; and for failing to appear for on-the-record testimony as required by two FINRA Rule 8210 requests.

Appearances

For Complainant: Matthew M. Ryan, Esq., Melissa J. Turitz, Esq., and Jeff Fauci, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

FINRA’s Department of Enforcement filed a Complaint against Respondent James Brett Stuart, formerly a registered representative and principal of a FINRA member firm. The first cause of action of the Complaint alleges that Respondent failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures (“WSPs”), reasonably designed to achieve compliance with FINRA Rule 2111 and, as of June 30, 2020, the Care Obligation of Rule 15c-1 of the Securities Exchange Act of 1934 (“Reg BI”), as these Rules pertain to excessive trading in customer accounts.¹ Respondent also failed to supervise

¹ Complaint (“Compl.”) ¶ 1.

reasonably a registered representative's trading in two customer accounts.² In the second cause of action, the Complaint alleges that Respondent failed to appear for on-the-record testimony ("OTR") FINRA requested under FINRA Rule 8210.³

According to the Complaint, Respondent violated FINRA Rules 2010, 3110, and 8210.⁴

After Enforcement served Respondent with the Complaint and the First and Second Notices of Complaint, Respondent failed to file an Answer. At my direction, Enforcement filed a motion for entry of default decision ("Default Motion"). Enforcement's Default Motion is supported by the declaration of counsel Matthew M. Ryan, Esq. ("Ryan Decl.") and 19 supporting exhibits (CX-1 through CX-19). Respondent did not file an opposition or otherwise respond to the Default Motion. For the reasons stated below, I find Respondent in default, deem admitted all allegations in the Complaint, grant the Default Motion, and issue this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Background

According to the Central Registration Depository ("CRD"), Respondent James Brett Stuart first registered with FINRA in 1998. Respondent was registered in several capacities, including as a General Securities Principal, through his association with Richfield Orion International, Inc. ("Richfield Orion"), a FINRA member firm.⁵ On November 3, 2022, Richfield Orion filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that Respondent had voluntarily terminated his association with the firm.⁶ Respondent is not now registered with FINRA or associated with a FINRA member firm.

B. Jurisdiction

Respondent remains subject to FINRA's jurisdiction under Article V, Section 4 of FINRA's By-Laws for the purpose of this proceeding because the Complaint (1) was filed within two years after the effective date of termination of Respondent's registration through a FINRA member firm, and (2) charges Respondent with misconduct committed while he was registered or associated with a FINRA member firm.⁷

² Compl. ¶ 2.

³ Compl. ¶ 3.

⁴ Compl. ¶¶ 101-03, 108, 111.

⁵ Compl. ¶ 4.

⁶ Compl. ¶ 4.

⁷ Compl. ¶ 5.

C. Origin of the Investigation

The investigation of this matter originated from an examination of Richfield Orion in July 2019.⁸ In connection with this examination, FINRA reviewed Richfield Orion's and Respondent's supervision of trading in customer accounts, including the two customer accounts described in the Complaint.⁹

D. Respondent's Default

Enforcement properly served Respondent with the Complaint and the First and Second Notices of Complaint by mailing them to Respondent's last known residential address as reflected in CRD, in accordance with FINRA Rule 9134.¹⁰ Respondent failed to answer or otherwise respond to the Complaint by December 18, 2023, the deadline in the Second Notice of Complaint, or at any other time.¹¹ Based on these facts, I find Respondent in default for his failure to answer the Complaint. FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who fails to answer the complaint within the time afforded by FINRA Rule 9215.¹² Respondent had the opportunity to file an Answer but did not. I find a default decision to be warranted.¹³ Once I find Respondent in default, I am authorized by FINRA Rules 9215 and 9269 to treat the allegations as admitted.¹⁴ As described below, I find Respondent committed the violations charged in the Complaint.

E. Respondent Failed to Establish, Maintain, and Enforce WSPs Reasonably Designed to Achieve Compliance with FINRA Rule 2111 and Reg BI, in Violation of FINRA Rules 3110 and 2010

1. Governing Law

Enforcement charges Respondent with violating FINRA Rules 3110 and 2010 because he failed to establish, maintain, and enforce WSPs reasonably designed to achieve compliance with FINRA Rule 2111 and Reg BI.¹⁵ FINRA Rule 3110 provides, "[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with

⁸ Ryan Decl. ¶ 4.

⁹ Ryan Decl. ¶ 5.

¹⁰ Ryan Decl. ¶¶ 14, 24; *see* FINRA Rule 9134(a)(2) and (b)(1).

¹¹ Ryan Decl. ¶¶ 29, 31.

¹² FINRA Rule 9269(a)(1).

¹³ Respondent is notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

¹⁴ FINRA Rules 9215(f); 9269(a)(2).

¹⁵ Compl. ¶¶ 1-2.

applicable FINRA rules.”¹⁶ FINRA Rule 3110 further provides, “[e]ach member shall establish, maintain, and enforce written procedures to supervise . . . the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”¹⁷

Ensuring proper supervision is a critical component of broker-dealer operations.¹⁸ An adequate supervisory system must include WSPs tailored to the FINRA member firm’s business lines.¹⁹ But WSPs alone are not enough to satisfy FINRA Rule 3110.²⁰ There must also be mechanisms for ensuring compliance and deterring violations.²¹ The duty of supervision includes investigating red flags suggesting that misconduct might be in progress, and acting on the results of such investigation.²² A supervisor is responsible for *reasonable* supervision, a standard based on the circumstances of each case.²³ A violation of FINRA Rule 3110 is a violation of FINRA Rule 2010.²⁴

The Complaint alleges that Respondent failed to establish, maintain, and enforce a supervisory system reasonably designed to ensure compliance with FINRA Rule 2111 and Reg BI. FINRA Rule 2111 requires an associated person to have a reasonable basis to believe a recommended transaction or investment strategy involving a security or securities is suitable for the customer.²⁵ Former Supplementary Material 2111, which was in effect for about the first two years of the period covered by the Complaint, required that a FINRA member firm or associated person have a reasonable basis for believing that a series of recommended transactions were not excessive and suitable for the customer when taken together considering the customer’s investment profile.²⁶

¹⁶ FINRA Rule 3110(a).

¹⁷ FINRA Rule 3110(b); *accord*, *Dep’t of Enforcement v. Silver Leaf Partners, LLC*, No. 2014042606902, 2020 FINRA Discip. LEXIS 36, at *53 (NAC June 29, 2020), *appeal docketed*, No. 3-19896 (SEC July 28, 2020).

¹⁸ *Dep’t of Enforcement v. C.L. King & Assocs., Inc.*, No. 2014040476901, 2019 FINRA Discip. LEXIS 43, at *41 (NAC Oct. 2, 2019).

¹⁹ *Id.* at *43.

²⁰ *Bruce Zipper*, Exchange Act Release No. 90737, 2020 SEC LEXIS 5226, at *39 (Dec. 21, 2020).

²¹ *Southeast Invs., N.C., Inc.*, Exchange Act Release No. 99118, 2023 SEC LEXIS 3460, at *21 (Dec. 7, 2023).

²² *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *48-49 (July 2, 2013); *Dep’t of Enforcement v. Dakota Secs. Int’l, Inc.*, No. 2016047565702, 2019 FINRA Discip. LEXIS 11, at *34 (NAC Mar. 18, 2019), *aff’d in part and remanded in part*, Exchange Act Release No. 90737, 2020 SEC LEXIS 5226 (Dec. 21, 2020).

²³ *Dep’t of Enforcement v. Clements*, No. 2015044960501, 2018 FINRA Discip. LEXIS 11, at *46-47 (NAC May 17, 2018).

²⁴ *C.L. King & Assocs., Inc.*, 2019 FINRA Discip. LEXIS 43, at *41 n.19.

²⁵ FINRA Rule 2111(a).

²⁶ FINRA Rule 2111, Supplementary Material 2111.05.

Since June 30, 2020, broker-dealers and their associated persons have been required to comply with Reg BI. Under Reg BI's Care Obligation, set forth in Exchange Act Rule 15c-1(a)(2)(ii)(C), a person associated with a broker-dealer is required to exercise reasonable diligence, care, and skill to:

[h]ave a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker, dealer, or such natural person making the series of recommendations ahead of the interest of the retail customer.²⁷

2. Richfield Orion's WSPs Were Not Reasonably Designed to Achieve Compliance with FINRA Rule 2111 and Reg BI

In the period covered by the Complaint, Respondent was Richfield Orion's Chief Executive Officer, Chief Compliance Officer ("CCO"), and majority owner.²⁸ As Richfield Orion's CCO, Respondent established and maintained the firm's WSPs and was responsible for reviewing and testing the WSPs on at least an annual basis.²⁹

The WSPs in this area were deficient in several respects. First, Richfield Orion's WSPs recognized that factors such as the turnover rate and cost-to-equity ratio could provide a basis for finding that activity in a customer account was excessive.³⁰ But the WSPs did not provide any guidance on how to calculate these ratios or identify what ratio levels suggested excessive trading.³¹

Second, the WSPs required Richfield Orion's Compliance Department to review active accounts on a quarterly basis, but they did not describe what steps the firm should take to supervise trades recommended in such accounts.³²

Third, the WSPs did not identify alerts Richfield Orion received from its clearing firm that were relevant to identify potential excessive trading, including (1) turnover alerts that identified accounts in which the account turnover exceeded certain percentage thresholds, and

²⁷ 17 C.F.R. § 240.15c-1(a)(2)(ii)(C).

²⁸ Compl. ¶ 6.

²⁹ Compl. ¶ 7.

³⁰ Compl. ¶ 8.

³¹ Compl. ¶ 8.

³² Compl. ¶ 9.

(2) a commission velocity alert that identified accounts in which commissions charged over the preceding 90 days exceeded certain percentage thresholds.³³

Fourth, after Reg BI went into effect, Respondent failed to update the WSPs to address this new SEC Rule.³⁴ As a result, the WSPs did not explain how Richfield Orion or its registered representatives should determine whether recommended trades might improperly place the firm's interest ahead of the customer's interest, such as identifying what cost-to-equity ratio or turnover rate suggested excessive trading.³⁵ The WSPs did not provide guidance on how the firm or its registered representatives should consider reasonably available investment alternatives in determining whether to recommend a transaction or series of transactions.³⁶

For these reasons, I conclude that Respondent violated FINRA Rules 3110 and 2010 when he failed to establish, maintain, and enforce WSPs reasonably designed to ensure that Richfield Orion's trading in customer accounts complied with federal regulations and FINRA Rules.

3. Respondent Failed to Detect and Investigate Red Flags of Potential Excessive Trading in Two Richfield Orion Customer Accounts

Respondent was the only member of Richfield Orion's Compliance Department and solely responsible for supervising the firm's registered representatives.³⁷ As CCO, Respondent was required to monitor trade blotters and customer account records for potential excessive trading and to review commission reports for each of the firm's registered representatives to detect possible churning.³⁸ Richfield Orion's WSPs required that the Compliance Department review active accounts on at least a quarterly basis, including a review of the type, size, and frequency of trades in these accounts.³⁹ The Compliance Department had to review at least quarterly the exception reports provided by Richfield Orion's clearing firm.⁴⁰

Richfield Orion received from its clearing firm "Commission Velocity" alerts that identified accounts in which the commission charged over the preceding 90 days exceeded percentage thresholds based on a customer's investment objective. The commission threshold was four percent for accounts with an investment objective of "growth," and six percent for

³³ Compl. ¶ 10.

³⁴ Compl. ¶ 11.

³⁵ Compl. ¶ 12.

³⁶ Compl. ¶ 12.

³⁷ Compl. ¶ 14.

³⁸ Compl. ¶ 15.

³⁹ Compl. ¶ 16.

⁴⁰ Compl. ¶ 17.

accounts with an investment objective of “speculation.”⁴¹ Richfield Orion also received “Turnover” alerts that identified accounts in which the turnover in the account exceeded percentage thresholds based on a customer’s investment objective. The threshold was 200 percent for accounts with an investment objective of “growth,” and 300 percent for accounts with an investment objective of “speculation.”⁴² Respondent, however, failed to review these Commission Velocity and Turnover alerts.⁴³

Respondent also failed to identify or investigate red flags of possible excessive trading activity in two customer accounts, as described below.⁴⁴

a. Customer A

Customer A was 62 years old when she opened an account at Richfield Orion.⁴⁵ A registered representative named C. Ronald Baker (CRD No. 10600) became representative of record on Customer A’s account in August 2018.⁴⁶ Respondent supervised Baker.⁴⁷ Although Customer A’s new account form stated her primary investment objective was “speculation” and that she had a high risk tolerance, her actual goal in opening an account at Richfield Orion was to grow her investments. She did not discuss her investment objective or risk tolerance with Baker.⁴⁸

For two and a half years, Richfield Orion received 540 Commission Velocity and Turnover alerts from its clearing firm showing Customer A’s account had commission velocity and turnover rates that exceeded the thresholds set by the clearing firm.⁴⁹ Respondent did not review any Commission Velocity or Turnover alerts relating to trading in Customer A’s account.⁵⁰

⁴¹ Compl. ¶ 18.

⁴² Compl. ¶ 19.

⁴³ Compl. ¶ 21.

⁴⁴ Compl. ¶ 23. The version of this Default Decision to be served on the parties will include an addendum, not included in the public version of the Decision, that identifies Customers A and B.

⁴⁵ Compl. ¶ 24.

⁴⁶ Compl. ¶ 25. According to FINRA’s BrokerCheck, on June 15, 2022, and without admitting or denying FINRA’s findings, Baker consented to a bar from associating in any capacity with any FINRA member firm for failure to appear for on-the-record testimony requested by FINRA in connection with its investigation into whether he had engaged in potential unsuitable and discretionary trading in customer accounts.

⁴⁷ Compl. ¶ 26.

⁴⁸ Compl. ¶ 27.

⁴⁹ Compl. ¶ 28.

⁵⁰ Compl. ¶ 30.

Respondent failed to confirm that the trading in Customer A's account was consistent with her investment profile.⁵¹ Respondent did not speak with Customer A about the trades.⁵² Nor did Respondent speak to Baker about them. Respondent did not restrict the commissions that Baker could charge Customer A.⁵³ In August 2019, Richfield Orion received Commission Velocity and Turnover alerts showing Customer A had been charged commissions equal to 34 percent of her account value. Despite these alerts, Baker executed another 535 trades in Customer A's account, which required her to pay another \$118,600 in commissions and trade costs.⁵⁴

In two and a half years, Baker recommended and executed 900 trades in Customer A's account, causing her to pay \$236,500 in total costs, including \$220,000 in commissions, and causing losses of \$368,159.⁵⁵

b. Customer B

When Customer B opened her account at Richfield Orion, she was a 77-year-old retiree.⁵⁶ Customer B had a moderate risk tolerance and did not wish to have an actively traded account.⁵⁷ Baker was the representative of record on Customer B's account.⁵⁸

In one year, Richfield Orion received 290 Commission Velocity and Turnover alerts from its clearing firm showing Customer B's account had exceeded the thresholds set by the clearing firm.⁵⁹ On one occasion, Richfield Orion received an alert that Customer B's account had a commission velocity of 20.59 percent.⁶⁰ In December 2020, Richfield Orion began to receive alerts that Customer B's account had turnover rates above six.⁶¹ By this time, Baker had already executed 41 trades in Customer B's account, causing her to pay \$5,554 in commissions.⁶²

⁵¹ Compl. ¶ 31.

⁵² Compl. ¶ 32.

⁵³ Compl. ¶ 33.

⁵⁴ Compl. ¶ 34. All monetary amounts in this Default Decision are rounded to the nearest dollar.

⁵⁵ Compl. ¶ 35.

⁵⁶ Compl. ¶ 37.

⁵⁷ Compl. ¶ 38.

⁵⁸ Compl. ¶ 39.

⁵⁹ Compl. ¶ 40.

⁶⁰ Compl. ¶ 41.

⁶¹ Compl. ¶ 42.

⁶² Compl. ¶ 43.

Respondent did not review any Commission Velocity or Turnover alerts related to trading in Customer B's account.⁶³ Respondent did not review Customer B's account to make sure the trading was consistent with her investment profile.⁶⁴ Nor did Respondent speak to Customer B about the trading.⁶⁵ He did not restrict the commissions Baker could charge in Customer B's account.⁶⁶ Despite the Commission Velocity and Turnover alerts from the clearing firm, Baker recommended and executed 102 trades in Customer B's account, necessitating that she pay an extra \$14,647 in commissions.⁶⁷ In one year, the trades caused an annualized cost-to-equity ratio of 31 percent and a turnover rate of seven.⁶⁸ Customer B incurred total costs of \$22,350 and losses of \$1,766.⁶⁹

I conclude that Respondent violated FINRA Rules 3110 and 2010 when he failed to detect and investigate red flags showing that Baker was using the accounts of Customer A and Customer B to perpetrate excessive trading.

F. Respondent Failed to Appear for Testimony, in Violation of FINRA Rules 8210 and 2010

1. Governing Law

Enforcement charges Respondent with violating FINRA Rules 8210 and 2010 because he failed to appear for on-the-record testimony as directed by two FINRA Rule 8210 requests.⁷⁰ FINRA Rule 8210 requires an associated person to appear for testimony requested by FINRA:

For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to . . . require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally . . . and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding . . . No

⁶³ Compl. ¶ 44.

⁶⁴ Compl. ¶ 45.

⁶⁵ Compl. ¶ 46.

⁶⁶ Compl. ¶ 47.

⁶⁷ Compl. ¶ 48.

⁶⁸ Compl. ¶ 49.

⁶⁹ Compl. ¶ 49.

⁷⁰ Compl. ¶ 3.

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.⁷¹

FINRA's examination authority under FINRA Rule 8210 is unequivocal and unqualified.⁷² FINRA Rule 8210 requires an associated person to provide full and prompt cooperation to FINRA.⁷³ Because FINRA does not have subpoena power, the Rule provides FINRA the means to obtain information necessary to conduct investigations.⁷⁴ Failure to appear for an OTR establishes a prima facie violation of the Rule.⁷⁵ A violation of FINRA Rule 8210 also violates FINRA Rule 2010.⁷⁶

2. Facts Showing a Violation

Beginning in July 2019, FINRA staff investigated Respondent's supervision of Baker. In that investigation, FINRA staff sent a FINRA Rule 8210 request directing Respondent to appear for an OTR.⁷⁷ Respondent appeared for testimony but, in the course of the OTR, Respondent complained that he was lightheaded and groggy.⁷⁸ Although the testimony continued, at 3:32 p.m., Enforcement adjourned the OTR to a future date to be determined.⁷⁹

After this adjournment, Enforcement made five attempts to schedule the continuation of Respondent's testimony:

⁷¹ FINRA Rule 8210(a)(1) and (c).

⁷² *Robert Juan Escobio*, Exchange Act Release No. 97701, 2023 SEC LEXIS 1532, at *16 (June 12, 2023); *Dep't of Enforcement v. DreamFunded Marketplace, LLC*, No. 2017053428201, 2021 FINRA Discip. LEXIS 24, at *64 (NAC Sept. 27, 2021), *appeal docketed*, No. 3-20639 (SEC Oct. 27, 2021).

⁷³ *DreamFunded Marketplace*, 2021 FINRA Discip. LEXIS 24, at *26.

⁷⁴ *Dep't of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *13-14 (NAC May 26, 2021), *appeal docketed*, No. 3-20380 (SEC July 1, 2021).

⁷⁵ *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *27 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

⁷⁶ *Howard Brett Berger*, Exchange Act Release No. 58590, 2008 SEC LEXIS 3141, at *2 n.2 (Nov. 14, 2008) ("A violation of another NASD rule, such as Rule 8210, constitutes a violation of Conduct Rule 2110."), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009); *Dep't of Enforcement v. Meyers Assocs., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *13 n.13 (NAC Jan. 4, 2018) ("A violation of any FINRA rule constitutes also a violation of FINRA Rule 2010."), *aff'd*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869 (July 26, 2019).

⁷⁷ Compl. ¶ 50.

⁷⁸ CX-19, at 39, 42.

⁷⁹ Compl. ¶ 53.

- June 10, 2022: this testimony did not go forward because Respondent notified FINRA he was unable to appear. Respondent claimed he had a family emergency.⁸⁰
- June 23, 2022: this testimony did not go forward because Respondent informed FINRA he was unable to appear.⁸¹ Enforcement held the OTR. Respondent failed to appear.⁸²
- July 1, 2022: this testimony did not go forward because Respondent stated he would not appear. Respondent claimed he had a medical condition.⁸³ FINRA issued a request under FINRA Rule 8210 scheduling the continuation of Respondent's testimony for July 6, 2022.⁸⁴
- July 6, 2022: this testimony did not go forward because Respondent failed to appear.⁸⁵ FINRA sent Respondent another FINRA Rule 8210 request directing him to appear for testimony on August 26, 2022.⁸⁶
- August 26, 2022: this testimony did not go forward because Respondent informed FINRA he would not appear.⁸⁷ Enforcement held the OTR. Respondent failed to appear.⁸⁸

To sum up, Respondent never appeared to continue his OTR despite two FINRA Rule 8210 requests and five attempts to schedule the continuation of his testimony.

I conclude that Respondent failed to appear for testimony as directed by FINRA Rule 8210 requests. Respondent's failure to appear impeded FINRA's investigation and deprived it of material information. Respondent failed to provide material testimony about the accounts of Customer A and Customer B. By failing to appear for testimony, Respondent violated FINRA Rules 8210 and 2010.

⁸⁰ Compl. ¶ 55.

⁸¹ Compl. ¶ 57.

⁸² Compl. ¶ 60.

⁸³ Compl. ¶ 63.

⁸⁴ Compl. ¶ 66.

⁸⁵ Compl. ¶ 73.

⁸⁶ Compl. ¶ 75.

⁸⁷ Compl. ¶ 82.

⁸⁸ Compl. ¶ 84.

III. Sanctions

FINRA's Sanction Guidelines provide that the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.⁸⁹ The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

I now consider the sanctions appropriate for Respondent's failure to supervise and his failure to appear for testimony.

A. Failure to Supervise, in Violation of FINRA Rules 3110 and 2010 (First Cause of Action)

The Sanction Guideline for failure to supervise by an individual recommends a fine of \$5,000 to \$30,000.⁹⁰ As for a suspension, bar, or other sanction, an adjudicator should consider suspending the respondent in all principal capacities for up to two months.⁹¹ Where aggravating factors predominate, the adjudicator should consider suspending the respondent in any or all capacities for up to two years, or barring him.⁹²

The considerations specific to this Guideline are:

- Whether the respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny.
- Whether the individuals responsible for the underlying misconduct attempted to conceal misconduct from the respondent.
- The nature, extent, size, and character of the underlying misconduct.
- The quality and degree of respondent's implementation of the firm's supervisory procedures and controls.⁹³

⁸⁹ FINRA Sanction Guidelines ("Guidelines") at 2 (2022) (General Principle No. 1), <http://www.finra.org/sanctionguidelines>.

⁹⁰ *Id.* at 124.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

Because proper supervision serves such an important role in protecting investors, egregious violations of supervisory rules often warrant the severest sanctions.⁹⁴

I find that aggravating factors predominate as to this cause of action and that Respondent's violation of FINRA Rule 3110 was egregious. Respondent failed to respond reasonably to red flag warnings of potential excessive trading. With regard to the accounts of Customer A and Customer B, Respondent's failure to supervise enabled Baker to place hundreds of trades in these accounts over a three-year period.

Because of Respondent, Richfield Orion's WSPs failed to specify steps the firm should take to supervise trades recommended in active accounts. The WSPs did not identify when, or under what circumstances, principals of the firm should contact customers with actively traded accounts or should restrict commissions charged in such accounts. The WSPs did not explain how principals should review Commission Velocity or Turnover alerts from the clearing firm. The WSPs did not advise as to the steps the firm should take after detecting red flags that one of its registered representatives was excessively trading a customer account.

The Principal Considerations set forth aggravating factors that apply to Respondent's failure to supervise. Respondent did not accept responsibility and acknowledge his misconduct prior to detection and intervention by FINRA.⁹⁵ Instead, Respondent failed to appear for the continuation of his OTR, stymying FINRA's effort to investigate the possibility of misconduct. Respondent engaged in many acts and a pattern of supervisory failures, including his lack of action as to hundreds of red flag alerts in two customer accounts.⁹⁶ Respondent engaged in the misconduct for a long time (over three years).⁹⁷ Respondent's failure to supervise resulted directly in monetary injury to two customers, and the injury was extensive.⁹⁸

For these reasons, for Respondent's violation of FINRA Rules 3110 and 2010 by failing to supervise, I bar Respondent from associating in any capacity with any FINRA member firm. I do not impose a fine.⁹⁹

⁹⁴ *DreamFunded Marketplace, LLC*, 2021 FINRA Discip. LEXIS 24, at *164.

⁹⁵ Guidelines at 7 (Principal Consideration No. 2: Whether an individual respondent accepted responsibility for and acknowledged the misconduct to a regulator before detection and intervention by the regulator).

⁹⁶ *Id.* (Principal Consideration No. 8: Whether the respondent engaged in many acts or a pattern of misconduct).

⁹⁷ *Id.* (Principal Consideration No. 9: Whether the respondent engaged in the misconduct for a long time).

⁹⁸ *Id.* (Principal Consideration No. 11: With respect to other parties, including the investing public, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury).

⁹⁹ *See id.* at 9 ("Adjudicators may exercise their discretion in applying FINRA's policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA's regulatory purposes.").

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

Because Respondent appeared for one session of testimony, I apply the Sanction Guideline for providing a partial but incomplete response to a FINRA Rule 8210 request. The Sanction Guideline for failure to respond to requests made pursuant to FINRA Rule 8210 by an individual recommends a fine of \$5,000 to \$20,000 where the respondent provided a partial but incomplete response.¹⁰⁰ As for a suspension, bar, or other sanction, a bar is standard unless the respondent can demonstrate that the information provided substantially complied with all aspects of the request.¹⁰¹ The considerations specific to this Guideline are:

- 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.
- The number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.
- The reasons offered by the respondent to justify the partial but incomplete response.¹⁰²

Because failure to respond to a FINRA Rule 8210 request subverts FINRA’s ability to execute its regulatory function, it is a serious violation justifying a stringent sanction.¹⁰³ A failure to respond to a FINRA Rule 8210 request frustrates FINRA’s ability to detect misconduct and threatens investors.¹⁰⁴ Failure to respond to FINRA’s requests for information should presumptively result in a bar.¹⁰⁵ An individual who provides a partial but incomplete response to a FINRA Rule 8210 request can be barred as well.¹⁰⁶

Respondent’s appearance for his first OTR did not substantially comply with all aspects of the FINRA Rule 8210 requests. In the SEC’s decision considering the bar in *Reifler*, the SEC directed that in applying the Sanction Guideline for a partial but incomplete response to a request for testimony, “FINRA should review and include in the record the entirety of the transcripts of

¹⁰⁰ *Id.* at 93.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *50-52 (Sept. 24, 2015).

¹⁰⁴ *Dep’t of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *41 (NAC July 21, 2014), *aff’d*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015).

¹⁰⁵ *Dep’t of Enforcement v. Reifler*, No. 2016050924601r, 2023 FINRA Discip. LEXIS 1, at *15 (NAC Jan. 17, 2023).

¹⁰⁶ *Id.* at *10.

[all] OTRs.”¹⁰⁷ I have reviewed the entire transcript of Respondent’s testimony, and I did not find testimony relating to Respondent’s supervision of the accounts of Customer A and Customer B. These subjects were important as viewed from FINRA’s perspective. Respondent was the sole member of Richfield Orion’s Compliance Department and firm principal responsible for supervising Baker’s trading in the accounts of Customer A and Customer B.¹⁰⁸ Only Respondent could provide critical information about the supervision of these accounts. It is aggravating that, although FINRA made two FINRA Rule 8210 requests following the adjournment of Respondent’s first OTR, he failed to appear to complete his testimony.

Respondent’s testimony remains incomplete, and he offers no reason to justify his failure to appear.

The Principal Considerations set forth aggravating factors that apply to Respondent’s failure to appear for testimony. Respondent did not accept responsibility for his misconduct.¹⁰⁹ He tried to delay FINRA’s investigation and to conceal information.¹¹⁰ His misconduct was intentional.¹¹¹ There are no mitigating factors.

For these reasons, for Respondent’s failure to appear for his OTR, in violation of FINRA Rules 8210 and 2010, I bar Respondent from associating in any capacity with any FINRA member firm. I do not impose a fine.

¹⁰⁷ *Bradley C. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *23 (Jan. 21, 2022). Because of the SEC’s directive, in moving for a default decision for a respondent’s partial failure to provide testimony in violation of FINRA Rule 8210, Enforcement should include the entire testimony transcript as an exhibit to its default motion.

¹⁰⁸ Compl. ¶¶ 13-14, 26.

¹⁰⁹ Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct to a regulator before detection and intervention by the regulator).

¹¹⁰ Guidelines at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA’s investigation or to conceal information from FINRA).

¹¹¹ *Id.* (Principal Consideration No. 13: Whether the respondent’s misconduct resulted from an intentional act, recklessness, or negligence).

IV. Order

Respondent James Brett Stuart is barred from associating in any capacity with any FINRA member firm for failing to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA Rules; for failing to reasonably supervise trading in customer accounts; and for failing to appear for on-the-record testimony as required by two FINRA Rule 8210 requests. The bars shall be effective immediately if this Default Decision becomes FINRA's final disciplinary action.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Copies to:

James Brett Stuart (via email, first-class mail, and overnight courier)
Matthew M. Ryan, Esq. (via email)
Melissa J. Turitz, Esq. (via email)
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