

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN LOWRY
(CRD No. 4336146),

and

KIM MONCHIK
(CRD No. 2528972),

Respondents.

Disciplinary Proceeding
No. 2022075597101

Hearing Officer–BDC

**ORDER DENYING RESPONDENT MONCHIK’S MOTION
FOR SUMMARY DISPOSITION**

I. Introduction

There are two causes of action in the Complaint against Respondent Kim Monchik. In Cause One, Enforcement alleges that Monchik violated FINRA Rules 8210 and 2010 by failing to timely respond to seven requests for documents and information made pursuant to Rule 8210 and issued to FINRA member firm Spartan Securities, LLC (“Spartan” or “the Firm”), where she serves as the Firm’s Chief Administrative Officer (“CAO”). In Cause Two, Enforcement alleges that Monchik and the Firm’s Chief Executive Officer, John Lowry, failed to timely respond to four requests for documents and information made under FINRA Rule 8210 and issued to Lowry.

Monchik moves for summary disposition on both causes of action against her (“Motion”). She contends the undisputed facts show that FINRA did not direct the relevant requests for documents and information to her, but instead the requests were directed to either Spartan or Lowry. Monchik contends that, as a matter of law, she cannot be found liable for failing to timely respond to requests directed to another associated person or member firm.

Enforcement opposes the Motion. Enforcement argues that Monchik, as the Firm’s CAO, was responsible for responding to the Rule 8210 requests issued to Spartan. Enforcement also contends that Lowry delegated to Monchik the responsibility for responding to the requests issued to him. Enforcement maintains that Monchik accepted the responsibility for responding to

all the requests issued to Spartan and Lowry, and that she collected and reviewed responsive documents, drafted narrative responses, and produced documents to FINRA in response to all the requests. Thus, Enforcement contends that Monchik has not met her burden of showing that no genuine issues of material fact exist and that she is entitled to judgment as a matter of law.

For the reasons below, I deny Monchik's Motion for Summary Disposition. I conclude that issues of material fact preclude summary disposition on the two causes of action against Monchik in the Complaint. The Hearing Panel must resolve these issues after a hearing.

II. Background

The facts relevant to deciding Monchik's Motion are largely undisputed. As discussed below, FINRA issued five requests for documents and information under FINRA Rule 8210 to Spartan in connection with an investigation into the Firm's sale of interests in unregistered private funds (the "Funds Investigation"), and two requests in connection with an examination involving the Firm's net capital calculation (the "Net Capital Examination"). Of the seven requests issued to Spartan, FINRA addressed five of the requests to Monchik in her capacity as CAO of the Firm—the remaining two requests were directed to counsel for the Firm. FINRA also issued four requests to Lowry pursuant to FINRA Rule 8210 in connection with its Funds Investigation.

A. FINRA Rule 8210 Requests Issued to Spartan in 2021 in Connection with the Funds Investigation

On June 3, 2021, FINRA issued a request for information under Rule 8210 to Spartan in connection with its Funds Investigation (the "June 3 Spartan Request").¹ FINRA directed the request to Monchik in her capacity as Spartan's CAO.² Spartan's response was due by June 17, 2021.³ Enforcement alleges that neither Monchik nor anyone else at the Firm responded by the deadline.⁴ Enforcement also alleges Monchik submitted a partial but incomplete response to the June 3 Spartan Request several days after the deadline.⁵

Thus, on June 25, 2021, FINRA sent a second request to Spartan under FINRA Rule 8210 (the "June 25 Spartan Request") listing the outstanding items from the June 3 Spartan Request.⁶ FINRA addressed the June 25 Spartan Request to Monchik in her capacity as the

¹ Complaint ("Compl.") ¶ 6; Monchik Answer ("Monchik Ans.") ¶ 6; Statement of Uncontested Facts in Support of Monchik Motion for Summary Disposition ("Monchik Statement") ¶ 1.

² Compl. ¶ 7; Monchik Statement ¶ 2.

³ Compl. ¶ 9; Monchik Ans. ¶ 9.

⁴ Compl. ¶ 12; Declaration of FINRA Senior Litigation Counsel Michelle Galloway ("Galloway Decl.") ¶ 15.

⁵ Compl. ¶ 13; Galloway Decl. ¶ 16.

⁶ Compl. ¶ 14; Monchik Ans. ¶ 14; Monchik Statement ¶ 3.

Firm's CAO.⁷ Spartan's response to the request was due by July 13, 2021.⁸ Enforcement alleges that neither Monchik nor anyone else at the Firm responded to the request by the deadline.⁹ According to Enforcement, on July 28, 2021, Monchik submitted a partial but incomplete response to the June 25 Spartan Request.¹⁰

On August 23, 2021, FINRA sent a third request to Spartan under FINRA Rule 8210 ("August 23 Spartan Request") listing the outstanding items that Spartan had not produced.¹¹ FINRA addressed the August 23 Spartan Request to Monchik in her capacity as the Firm's CAO.¹² Spartan's response to the August 23 Spartan Request was due by September 7, 2021.¹³ Enforcement alleges that neither Monchik nor anyone else at Spartan responded to the request by the deadline.¹⁴

Because of Spartan's alleged failure to fully comply with the June 3, June 25, and August 23 Spartan Requests, on October 4, 2021, FINRA initiated an expedited proceeding under FINRA Rule 9552 by sending Spartan a letter informing the Firm that it would be suspended on October 28, 2021, unless it fully complied with the Requests.¹⁵ Spartan completed its response to the June 3, June 25, and August 23 Spartan Requests on December 1, 2021, and the expedited proceeding was dismissed.¹⁶

B. FINRA Rule 8210 Requests Issued to Spartan in 2022 in Connection with the Net Capital Examination

On February 2, 2022, in connection with FINRA's Net Capital Examination and pursuant to FINRA Rule 8210, FINRA requested documents and information from Spartan (the "February 2 Spartan Request").¹⁷ FINRA addressed the February 2 Spartan Request to Monchik as the Firm's CAO.¹⁸ Monchik requested and was granted an extension to respond to the request until

⁷ Compl. ¶ 15; Respondent Monchik's Summary Disposition Exhibit ("RX-") 2 (Rule 8210 Request to Spartan dated June 25, 2021); Monchik Statement ¶ 4.

⁸ Compl. ¶ 16.; RX-2.

⁹ Compl. ¶ 19; Galloway Decl. ¶ 20.

¹⁰ Compl. ¶ 20; Galloway Decl. ¶ 21.

¹¹ Compl. ¶ 22; Monchik Ans. ¶ 22; RX-3 (Rule 8210 Request to Spartan dated Aug. 23, 2021); Monchik Statement ¶ 5.

¹² Compl. ¶ 23; RX-3; Monchik Statement ¶ 6.

¹³ Compl. ¶ 24; Monchik Ans. ¶ 24.

¹⁴ Compl. ¶ 27; Galloway Decl. ¶ 25.

¹⁵ Compl. ¶ 28; Galloway Decl. ¶ 26; RX-4 (Oct. 4, 2021 Notice of Suspension).

¹⁶ Compl. ¶ 32; Galloway Decl. ¶ 28.

¹⁷ Compl. ¶ 91; Monchik Ans. ¶ 91; RX-5 (Rule 8210 Request to Spartan dated Feb. 2, 2022); Monchik Statement ¶ 13.

¹⁸ Compl. ¶ 92; Galloway Decl. ¶ 72; RX-5.

March 2, 2022, but according to Enforcement, neither Monchik nor anyone else at Spartan responded to the request by that date.¹⁹

On March 3, 2022, FINRA sent a second request to Spartan under FINRA Rule 8210 (the “March 3 Spartan Request”), along with a copy of the February 2 Spartan Request.²⁰ FINRA addressed the request to Monchik and the response was due by March 17, 2022.²¹ Monchik requested and was granted extensions until April 14, 2022, but according to Enforcement, neither Monchik nor anyone else at the Firm responded to the request by that deadline.²²

Because of Spartan’s alleged failure to fully comply with the February 2 and March 3 Spartan Requests, on June 14, 2022, FINRA initiated an expedited proceeding under FINRA Rule 9552 by sending Spartan a letter informing the Firm that it would be suspended on July 8, 2022, unless it fully complied with the Requests.²³ On August 8, 2022, Monchik completed Spartan’s response to the February 2 and March 3, 2023 Spartan Requests and the expedited proceeding was dismissed.²⁴

C. FINRA Rule 8210 Requests Issued to Lowry in 2022 in Connection with the Funds Investigation

On May 6, 2022, FINRA issued a request for documents and information to Lowry in connection with its ongoing Funds Investigation and under FINRA Rule 8210 (the “May 6 Lowry Request”).²⁵ FINRA addressed the May 6 Lowry Request to counsel for Lowry, and Monchik received a copy of the letter.²⁶ Lowry’s response to the request was due by May 20, 2022.²⁷ Enforcement alleges that Lowry did not respond by the deadline but later requested a three-week extension, which FINRA granted.²⁸ The new deadline was June 13, 2022, but according to Enforcement, neither Lowry nor anyone on Lowry’s behalf responded to the request by the deadline.²⁹

¹⁹ Compl. ¶¶ 96, 97; Galloway Decl. ¶¶ 74, 75.

²⁰ Compl. ¶ 98; Monchik Ans. ¶ 98; RX-6 (Rule 8210 Request to Spartan dated Mar. 3, 2022); Monchik Statement ¶ 15.

²¹ Compl. ¶¶ 98, 99; RX-6; Monchik Statement ¶ 16.

²² Compl. ¶¶ 102, 103, 104; Monchik Ans. ¶¶ 102, 103; Galloway Decl. ¶¶ 80, 81, 82.

²³ Compl. ¶ 105; Galloway Decl. ¶ 85; RX-7 (June 14, 2021 Notice of Suspension).

²⁴ Compl. ¶ 110; Monchik Ans. ¶ 110; Galloway Dec. ¶ 87.

²⁵ Compl. ¶ 33; RX-11 (Rule 8210 Request to Lowry dated May 6, 2022); Monchik Statement ¶ 31.

²⁶ Compl. ¶ 36; RX-11.

²⁷ Compl. ¶ 35; RX-11.

²⁸ Compl. ¶ 38; Galloway Decl. ¶ 48.

²⁹ Compl. ¶ 39; Galloway Decl. ¶ 49.

On June 15, 2022, FINRA sent a second request to Lowry under Rule 8210 (the “June 15 Lowry Request”) and included a copy of the May 6 Lowry Request.³⁰ FINRA addressed the June 15 Lowry Request to counsel for Lowry, and Monchik received a copy.³¹ Enforcement alleges that Monchik, on behalf of Lowry, submitted a partial but incomplete response to the request on June 29, 2022.³²

Because Lowry purportedly failed to fully comply with the May 6 and June 15 Lowry Requests, on July 14, 2022, FINRA initiated an expedited proceeding against Lowry under FINRA Rule 9552 by sending him a letter informing him that he would be suspended on August 8, 2022, unless he fully complied with the Requests.³³ Lowry completed his response to the May 6 and June 15 Lowry Requests in September 2022 and the expedited proceeding was dismissed.³⁴

D. FINRA Rule 8210 Requests Issued to Spartan in 2023 in Connection with the Funds Investigation

On January 18, 2023, FINRA issued a request for documents and information to Spartan in connection with its ongoing Funds Investigation and pursuant to FINRA Rule 8210 (the “January 18 Spartan Request”).³⁵ FINRA addressed the January 18 Spartan Request to counsel for Spartan.³⁶ The Firm’s response initially was due by February 1, 2023, but the deadline was extended to February 21, 2023.³⁷ Enforcement alleges that Monchik, on behalf of the Firm, submitted a partial but incomplete response on February 16, 2023.³⁸

On February 28, 2023, FINRA sent a second request to Spartan under FINRA Rule 8210 (the “February 28 Spartan Request”).³⁹ FINRA addressed the February 28 Spartan Request to counsel for Spartan, and Monchik received a copy.⁴⁰ The Firm’s response was due by March 14,

³⁰ Compl. ¶ 40; RX-12 (Rule 8210 Request to Lowry dated June 15, 2022); Monchik Statement ¶ 33.

³¹ Compl. ¶ 43; RX-12.

³² Compl. ¶ 45; Galloway Decl. ¶ 53.

³³ Compl. ¶ 46; Galloway Decl. ¶ 54; RX-13 (July 14, 2022 Notice of Suspension).

³⁴ Compl. ¶ 50; Galloway Decl. ¶ 56.

³⁵ Compl. ¶ 51; Monchik Ans. ¶ 51; RX-8 (Rule 8210 Request to Spartan dated Jan. 18, 2023); Monchik Statement ¶ 22.

³⁶ Compl. ¶ 54; Monchik Ans. ¶ 54; Monchik Statement ¶ 23.

³⁷ Compl. ¶¶ 53, 56–57; Monchik Ans. ¶¶ 53, 56–57; RX-8.

³⁸ Compl. ¶ 58; Galloway Decl. ¶ 34.

³⁹ Compl. ¶ 59; RX-9 (Rule 8210 Request to Spartan dated Feb. 28, 2023); Monchik Statement ¶ 24.

⁴⁰ Compl. ¶ 62; RX-9.

2023.⁴¹ Enforcement alleges that Spartan failed to respond by the deadline but that Monchik, on behalf of the Firm, provided partial responses on April 10 and May 10, 2023.⁴²

Because of Spartan's alleged failure to fully comply with the January 18 and February 28 Spartan Requests, on August 1, 2023, FINRA initiated an expedited proceeding against Spartan under FINRA Rule 9552 by sending the Firm a letter informing the Firm that it would be suspended on August 25, 2023, unless it fully complied with the Requests.⁴³ Spartan completed its response to the January 18 and February 28 Requests in August 2023 and the expedited proceeding was dismissed.⁴⁴

E. FINRA Rule 8210 Requests Issued to Lowry in Connection with the 2023 Funds Investigation

At the same time FINRA issued its January 18 Spartan Request, FINRA also sent a request dated January 18, 2023, under Rule 8210 to Lowry through his counsel (the "January 18 Lowry Request").⁴⁵ Lowry's response to the January 18 Lowry Request was due by February 1, 2023, but he requested and received extensions until February 21, 2023.⁴⁶ According to Enforcement, as of February 28, 2023, Monchik, on behalf of Lowry, had provided only a partial response.⁴⁷

On February 28, 2023, FINRA sent a second request to Lowry under FINRA Rule 8210 (the "February 28 Lowry Request").⁴⁸ Once again, FINRA addressed the request to Lowry, care of his counsel.⁴⁹ Monchik also received a copy of the February 28 Lowry Request.⁵⁰ Lowry's response was due by March 14, 2023.⁵¹ Enforcement alleges that Monchik, on behalf of Lowry, provided FINRA with partial but incomplete responses in March and April 2023.⁵²

Because of Lowry's alleged failure to fully comply with the January 18 and February 28 Lowry Requests, on August 1, 2023, FINRA initiated an expedited proceeding against Lowry pursuant to FINRA Rule 9552 by sending a letter informing him that he would be suspended on

⁴¹ Compl. ¶ 61; Monchik Ans. ¶ 61; RX-9.

⁴² Compl. ¶¶ 64, 65; Galloway Decl. ¶¶ 38, 39.

⁴³ Compl. ¶ 66; Monchik Ans. ¶ 66; RX-10 (Aug. 1, 2023 Notice of Suspension).

⁴⁴ Compl. ¶ 69; Monchik Ans. ¶ 69; Galloway Decl. ¶ 42.

⁴⁵ Compl. ¶ 70; RX-14 (Rule 8210 Request to Lowry dated Jan. 18, 2023); Monchik Statement ¶¶ 40, 41.

⁴⁶ Compl. ¶¶ 72, 75, 77; RX-14; Galloway Decl. ¶¶ 60, 61.

⁴⁷ Compl. ¶ 77; Galloway Decl. ¶ 62.

⁴⁸ Compl. ¶ 78; RX-15 (Rule 8210 Request to Lowry dated Feb. 28, 2023); Monchik Statement ¶ 42.

⁴⁹ Compl. ¶ 81; RX-15; Monchik Statement ¶ 44.

⁵⁰ See RX-15.

⁵¹ Compl. ¶ 80; RX-15.

⁵² Compl. ¶ 84; Galloway Decl. ¶ 67.

August 25, 2023, unless he fully complied with the Requests.⁵³ In September and October 2023, Lowry completed his response to the January 18 and February 28 Lowry Requests and the expedited proceeding was dismissed.⁵⁴

III. Summary Disposition Standard

FINRA Rule 9264(e) establishes a two-prong test for the consideration of motions for summary disposition. The rule permits summary disposition only if both prongs are satisfied. First, there must be no genuine issue about any material fact. Rule 9264(e) states that the facts alleged in the pleadings of the non-moving party must be taken as true, unless modified by stipulations or admissions made by the non-moving party, uncontested affidavits, or declarations, or facts officially noticed under Rule 9145. All reasonable inferences must be drawn in favor of the party opposing summary disposition.⁵⁵ Second, the moving party must have a right to summary disposition as a matter of law.⁵⁶

To prevail on a motion for summary disposition, the movant must show that there is no genuine issue of material fact; once the movant meets that burden, the non-moving party must show that there are material facts in dispute.⁵⁷ Summary disposition is appropriate “[w]hen the record as a whole could not lead a rational adjudicator to find for the nonmoving party.”⁵⁸ And summary disposition is improper when “the nonmoving party produces sufficient evidence to raise a question as to the outcome of the case[.]”⁵⁹ According to the NAC, with summary disposition motions, “the Hearing Panel’s role is not to weigh the evidence and determine the truth of the case presented, but to determine whether the evidence presents a disagreement sufficient to require submission to fact finding.”⁶⁰

⁵³ Compl. ¶ 85; Galloway Decl. ¶ 68; RX-16 (Aug. 1, 2023 Notice of Suspension).

⁵⁴ Compl. ¶ 90; Galloway Decl. ¶ 70.

⁵⁵ See OHO Order 17-02 (2014042291901) (Feb. 7, 2017), at 3, https://www.finra.org/sites/default/files/OHO_Order_17-02_2014042291901.pdf (citations omitted).

⁵⁶ *Id.* (denying summary disposition in part because material facts were in dispute); OHO Order 15-07 (2013036217601) (Apr. 2, 2015), <http://www.finra.org/sites/default/files/OHO-Order-15-07-Proceeding-No.2013036217601.pdf> (granting in part and denying in part summary disposition based on the standards established in FINRA Rule 9264).

⁵⁷ *Dep’t of Enforcement v. Walblay*, No. 2011025643201, 2014 FINRA Discip. LEXIS 3, at *3 (NAC Feb. 25, 2014).

⁵⁸ *Id.*

⁵⁹ *Id.* (internal quotation omitted).

⁶⁰ *Id.* at *2 (internal quotations and citations omitted).

IV. Discussion

A. FINRA Rule 8210 Requires Members and Associated Persons to Timely Comply with FINRA's Information Requests

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide information to FINRA upon request for the purpose of an investigation, complaint, examination, or proceeding.⁶¹ 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." Rule 8210 is unequivocal in its requirement that member firms and associated persons provide full, prompt, and complete cooperation in response to requests made under Rule 8210.⁶²

B. Liability Under FINRA Rule 8210 Extends to Associated Persons Responsible for Responding to the Requests

In her Motion, Monchik argues that she cannot be found liable under Rule 8210 as a matter of law for failing to timely respond to the Rule 8210 requests at issue here because they were all directed either to Spartan or Lowry, and not to "Monchik as an Associated Person."⁶³ She relies on the language of Rule 8210(d), which states that "a 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" (emphasis added). But that subsection of Rule 8210 governs how a request issued under Rule 8210 should be served and when service of the request is deemed effected—and there is no dispute that FINRA properly effected service when it sent the requests to Spartan (through Monchik and the Firm's counsel) and to Lowry (through his counsel). Nothing in Rule 8210 explicitly limits liability under the rule to only those to whom a request is directed.⁶⁴

The NAC also has made clear that an associated person responsible for providing information and documents in response to a request from FINRA can be held liable under Rule 8210 for failing to do so, even when the request was directed to a member firm or another

⁶¹ FINRA Rule 8210(a), (c).

⁶² *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009); *see also Dep't of Enforcement v. Larson*, No. 20140399174202, 2020 FINRA Discip. LEXIS 44, *92 (NAC Sept. 21, 2020).

⁶³ Motion at 5.

⁶⁴ Even assuming FINRA Rule 8210(d) supported Monchik's position, FINRA addressed five of the seven requests to Monchik in her capacity as the CAO of the Firm. The SEC has held that the "[t]he addressee [of an 8210 request] 'has a duty to respond . . . or to supervise others diligently with adequate follow-up to ensure a prompt response to [FINRA].'" *Robert Fitzpatrick*, Exchange Act Release No. 44956, 2001 SEC LEXIS 2185, at *10 (Oct. 19, 2001) (quoting *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831, at *10 (July 19, 1993)).

associated person.⁶⁵ In *Dep't of Enforcement v. Larson*, FINRA issued several information requests under Rule 8210 to the firm. FINRA addressed the first request to the firm's president and executive representative.⁶⁶ The firm's president forwarded the initial request to Larson, who the firm designated as the person responsible for responding to information requests issued to the firm.⁶⁷ When Larson failed to respond timely and completely to the information requests, FINRA charged him with violating FINRA Rule 8210, even though the requests were not directed to him.⁶⁸ In affirming the Hearing Panel's decision finding that Larson violated Rule 8210, the NAC held that "as the individual who oversaw each of his firm's responses, drafted each of those responses, and attested to their responsiveness, he is squarely liable under FINRA Rule 8210 for their deficiencies."⁶⁹

Here, the Complaint alleges that Monchik was responsible for responding to the requests issued to Spartan.⁷⁰ The Complaint also alleges that Lowry delegated to Monchik the responsibility for responding to the requests directed to Lowry.⁷¹ These allegations must be taken as true in ruling on the Motion, unless modified by stipulations or admissions made by the non-moving party or uncontested affidavits or declarations.⁷² Spartan represented to FINRA that Monchik was responsible for responding to requests issued to Spartan and Lowry, and Monchik herself acknowledged during her on-the-record ("OTR") testimony that she was responsible for preparing responses directed to both the Firm and Lowry.⁷³ Whether Monchik violated FINRA Rule 8210 by failing to respond timely to FINRA's information requests is an issue for the Hearing Panel to determine after weighing the evidence presented at the hearing and making credibility determinations. But for purposes of Monchik's Motion, the law is clear that she can be held liable under FINRA Rule 8210 for failing to timely respond to information requests issued under Rule 8210, even if the requests were directed to a member firm or another associated person.⁷⁴

⁶⁵ See, e.g., *Larson*, 2020 FINRA Discip. LEXIS 44, at *92–96; see also *Dep't of Enforcement v. Harvest Capital Invs., LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *39 (NAC Oct. 6, 2008) ("[T]he record shows that Cotto, on behalf of Harvest Capital, failed to respond fully and completely to four of the five written requests.").

⁶⁶ 2020 FINRA Discip. LEXIS 44, at *80.

⁶⁷ *Id.* at *81. The subsequent requests at issue were directed to the firm and Larson responded to the requests on behalf of the firm, though he did not provide complete responses. *Id.* at *93.

⁶⁸ *Id.* at *8.

⁶⁹ *Id.* at *95; see also *Harvest Capital Invs., LLC*, 2008 FINRA Discip. LEXIS 45, at *39.

⁷⁰ Compl. ¶¶ 7, 15, 23, 52, 60, 92, 99; see also Galloway Decl. ¶¶ 5, 8.

⁷¹ Compl. ¶¶ 34, 41, 71, 79, Galloway Decl. ¶¶ 43–44.

⁷² See FINRA Rule 9264(e).

⁷³ See CX-1, at 5–6; Enforcement Opposition Exhibit ("CX-") 2, (Monchik OTR Tr.) at pp. 7–9, 29–30, 53–54, 65–66.

⁷⁴ See *Larson*, 2020 FINRA Discip. LEXIS 44, at *95; see also *Harvest Capital Invs., LLC*, 2008 FINRA Discip. LEXIS 45, at *39.

C. The Cases Monchik Relies On Do Not Support Her Argument

Monchik cites several decisions in her Motion that she contends support her argument that, as a matter of law, she cannot be held liable for failing to timely respond to the Rule 8210 requests since the requests were not directed to her. But none of the cases she cites involved an associated person's failure to timely respond to a request issued under Rule 8210 to a member firm or another associated person, and therefore do not support her argument.

Monchik relies primarily on the SEC's decision in *Michael A. Rooms*.⁷⁵ In *Rooms*, FINRA directed several Rule 8210 requests to a member firm's president, and not to the respondent, Michael Rooms. Rooms provided false and misleading information to the firm's president, who then provided that information to FINRA in response to a Rule 8210 request. The SEC found that, because FINRA did not direct the request to Rooms and the record did not establish that Rooms was aware of the Rule 8210 request directed to the firm's president when he produced the misleading information to him, Rooms could not be liable under FINRA Rule 8210.⁷⁶ The SEC held, however, that liability under Rule 8210 may extend to associated persons who are "aware of an 8210 request directed to the firm" and provide false or misleading information in response to the request.⁷⁷ Monchik contends that the *Rooms* decision limits FINRA's ability to impose liability for a Rule 8210 violation to those member firms and associated persons to whom the request is directed, unless false or misleading information is provided.

But Monchik misapprehends the holding in *Rooms*. The SEC's decision in *Rooms* was based on Rooms' lack of knowledge of the Rule 8210 request, which is why the SEC referenced Rule 8210(d) related to notice of a Rule 8210 request. As the SEC acknowledged, "[l]iability under the rule may possibly extend to associated persons of a firm who are aware of an 8210 request directed to the firm and seek to falsify or impede the firm's response."⁷⁸ Unlike in *Rooms*, the evidence here suggests that Monchik was aware of all of the Rule 8210 requests issued to Spartan and Lowry, and that she was responsible for compiling the responsive documents and preparing the responses to the 8210 requests.⁷⁹

Monchik maintains that in the years following the SEC's decision in *Rooms*, "Hearing Panels and the NAC have repeatedly cited *Rooms* and its progeny and applied its holding that an Associated Person only fails to respond to an 8210 Request when the 8210 Request is directed to the Associated Person."⁸⁰ But that is not accurate. Indeed, none of the cases cited by Monchik in her Motion involved an associated person's failure to timely respond to a Rule 8210 request.

⁷⁵ *Michael A. Rooms*, Exchange Act Release No. 51467, 2005 SEC LEXIS 728 (Apr. 1, 2005).

⁷⁶ *Id.* at *11.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See *supra* note 73.

⁸⁰ Motion at 7.

Rather, each case involved an associated person who provided false or misleading information to FINRA. The issue in all of the post-*Rooms* decisions cited by Monchik hinged on whether the associated person was aware of the Rule 8210 request when they provided the misleading information.⁸¹

For example, Monchik cites the Hearing Panel's decision in *Dep't of Mkt. Regulation v. Auzers*, where FINRA charged the two respondents, Auzers and Naby, with violating Rule 8210 for altering records that the firm produced to FINRA in response to a Rule 8210 request.⁸² Failure to timely respond was not an issue in the case. FINRA directed the information requests to the firm, and not to Auzers and Naby. Monchik claims that the Hearing Panel in *Auzers*—citing *Rooms*—dismissed a Rule 8210 charge against Auzers in part because the requests were not directed to him.⁸³ But Monchik's claim is not correct. The Hearing Panel in *Auzers* cited *Rooms* for the proposition that an associated person may violate FINRA Rule 8210 when he or she provides false or misleading information to the firm and knows that the information is being produced to FINRA in response to a Rule 8210 request, even when the request is directed to the member firm and not to the associated person.⁸⁴ Monchik is correct that the Hearing Panel in *Auzers* ultimately dismissed the Rule 8210 charge against Auzers, but it did so based on the facts of that case, not because FINRA directed the request to the firm and not to Auzers. The Hearing Panel found Auzers did not violate FINRA Rule 8210 because he reasonably believed he was not misrepresenting facts when he provided the information to his firm.⁸⁵

Monchik's reliance on the Hearing Panel's decision in *Dep't of Mkt. Regulation v. Borsky* is similarly misplaced.⁸⁶ Again, the issue in *Borsky* was whether the respondent violated Rule 8210 or Rule 2010 or both rules when he provided false information to FINRA in response to a Rule 8210 request. Failure to timely respond was not an issue. The Hearing Panel held that “although the Rule 8210 request was not directed expressly to [Borsky], because [he] was aware that the false information that he had provided to his employer was being provided to [FINRA] in response to a Rule 8210 request for information, the Hearing Panel finds that [Borsky] violated [FINRA Rules] 8210 and 2010.”⁸⁷

⁸¹ See, e.g., *Dep't of Enforcement v. Harrington and Milberger*, No. 2015047303901, 2018 FINRA Discip. LEXIS 31, at *107 (OHO Nov. 12, 2018) (finding that Milberger violated Rule 8210 “because she was aware that the falsified document that she altered was being produced to FINRA pursuant to a Rule 8210 request.”), *modified sub nom. Dep't of Enforcement v. Milberger*, 2020 FINRA Discip. LEXIS 24 (NAC Mar. 27, 2020).

⁸² See *Dep't of Mkt. Regulation v. Auzers*, No. 2012032080301, 2016 FINRA Discip. LEXIS 8 (OHO Apr. 4, 2016).

⁸³ Motion at 8.

⁸⁴ *Auzers*, 2016 FINRA Discip. LEXIS 8, at *33.

⁸⁵ The Hearing Panel found, however, that Naby knowingly falsified documents and therefore violated Rule 8210, even though the Rule 8210 request was not directed to her. *Auzers*, 2016 FINRA Discip. LEXIS 8, at *38–40.

⁸⁶ *Dep't of Mkt. Regulation v. Borsky*, No. 2005000078501, 2007 NASD Discip. LEXIS 38 (OHO May 25, 2007).

⁸⁷ *Id.* at n.11.

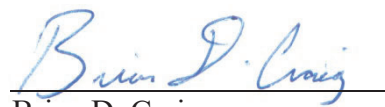
In support of her Motion, Monchik references a footnote in *Borsky* where the Hearing Panel—citing *Rooms*—noted that even if the facts showed that Respondent’s misconduct did not violate Rule 8210, he still violated FINRA Rule 2010. But the Hearing Panel’s reference to *Rooms* does not support Monchik’s argument that she cannot be held liable for failing to respond to Rule 8210 requests directed to others since the record in this case, unlike in *Rooms*, shows that Monchik was aware of the Rule 8210 requests. In fact, the Hearing Panel in *Borsky* specifically noted that the case was distinguishable from *Rooms* because the respondent in that case, unlike *Borsky*, was not aware of the Rule 8210 request.⁸⁸

Finally, Monchik argues that “there is no basis for any claim against [her] because she assisted Spartan or Lowry to compile materials and information for the 8210 Requests directed to Spartan and Lowry, respectively.”⁸⁹ She relies on the NAC’s decision in *Dep’t of Enforcement v. Walblay*, where the NAC held that “the person to whom an information request is directed has a duty to respond . . . and cannot shift responsibility to [another person] for his own failure to provide requested information in a timely fashion.”⁹⁰ While that is true, the *Walblay* decision did not address whether an associated person responsible for responding to a request directed to a member firm or another associated person can also violate Rule 8210 for failing to timely respond. And the NAC and OHO hearing panels have found individuals liable under Rule 8210 even when the request was not directed to that person.⁹¹

V. Order

For the reasons addressed above, I find that genuine issues of material fact preclude summary judgment on Counts One and Two of the Complaint and that Monchik is not entitled to judgment as a matter of law. Monchik’s Motion is therefore **DENIED**.

SO ORDERED.


Brian D. Craig
Hearing Officer

Dated: June 2, 2025

⁸⁸ *Id.*

⁸⁹ Motion at 10.

⁹⁰ *Walblay*, 2014 FINRA Discip. LEXIS 3, at *16 (quoting *Dennis A. Pearson*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *14 (Dec. 11, 2006)).

⁹¹ See *Larson*, 2020 FINRA Discip. LEXIS 44, at *95; *Harvest Capital Invs., LLC*, 2008 FINRA Discip. LEXIS 45, at *39; see also *Harrington*, 2018 FINRA Discip. LEXIS 31, at *109 (finding that both Harrington and Milberger violated FINRA Rule 8210 in connection with a request directed to Harrington).

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