

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

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

EDDMON MARK HODGE
(CRD No. 3187403),

Respondent.

Disciplinary Proceeding
No. 2006003995001

Hearing Officer – Sara Nelson Bloom

HEARING PANEL DECISION

October 1, 2008

**Respondent is barred for failing to respond to written requests
for information and documents, in violation of Rules 8210 and
2110.**

Appearances

Heather Hawker, Esq., and Helen Barnhill, Esq., Denver, Colorado, appeared for the Department of Enforcement.

Respondent appeared on his own behalf.

I. Procedural History

On November 28, 2007, the Department of Enforcement (“Enforcement”) filed a one-count Complaint alleging that Eddmon Mark Hodge (“Respondent”) failed to respond to two written requests for information made in April and May of 2007, in violation of Rules 8210 and 2110. Respondent filed an Answer denying the charges and requesting a hearing, which was held on June 24, 2008, before a Hearing Panel composed of a Hearing Officer and two former members of the District 3 Committee.¹

¹ References to the testimony of the hearing are designated as “Tr.____,” with the appropriate page number. References to the exhibits provided by Enforcement are designated as “CX-____.” CX-1 – CX-18 were admitted into the record. Respondent offered no exhibits.

II. Respondent

Respondent was first associated with a FINRA member firm in February 1999. From October 15, 2003, through January 26, 2005, Respondent was associated with Tower Square Securities, Inc. (“Tower Square”), as an Investment Company and Variable Contracts Products Representative. From February 17 through December 31, 2005, Respondent was again registered in this same capacity with World Group Securities, Inc. (“WGS”). Respondent is currently not associated with a member firm.² CX-5 pp. 4-5; Tr. 17-18.

III. Facts

The facts are largely undisputed. FINRA Staff began an investigation after WGS filed an amended Form U5 on January 5, 2006, disclosing a customer complaint that Respondent “solicited a variable universal life (VUL) insurance policy that was not suitable for [his customers’] needs and placed their funds in investments that were beyond their risk tolerance.” CX-6.

During the course of its investigation, Staff learned that in late 2004 and early 2005, Respondent conducted at least three seminars entitled “Missed Fortune.” During these seminars, Respondent discussed the benefits of refinancing mortgages and investing the proceeds in securities products. Tr. 74. As part of his marketing of these seminars, Respondent ran an advertisement in a publication targeting seniors. CX-3 p. 3; Tr. 73, 94.

Among other things, Staff wanted to examine (1) the accuracy of Respondent’s representations during his seminars, (2) whether these representations raised suitability concerns,

² Under Article V, Section 4 of the By-Laws, FINRA has jurisdiction to bring this disciplinary action, because the Complaint was filed within two years after the termination of Respondent’s registration with a member firm and alleges misconduct while he was registered.

and (3) whether Respondent had disclosed this activity to his employer. Staff also wanted to investigate the role of others with whom Respondent shared commissions. Tr. 51.

Accordingly, Staff issued an initial Rule 8210 request for information to Respondent on August 17, 2006. CX-7. Staff requested that Respondent provide a narrative and related documents regarding the purpose of the seminars and the strategies Respondent suggested, the identities of people who made investments based upon the seminars, Respondent's compensation arrangements, and Respondent's disclosure of his activities to his employer. In addition, Staff requested information as to the substance of Respondent's contact with certain complaining customers. Id. When Respondent failed to respond to this request, Staff issued second, third, and fourth requests for the same information on September 6, 2006, September 14, 2006, and January 29, 2007. CX-8, CX-9, CX-10. Finally, on February 26, 2007, Respondent sent a partial response to the Staff's requests. CX-3, CX-4; Tr. 44-47.

After reviewing the response, Staff determined that it needed additional information. Accordingly, Staff sent a Rule 8210 request to Respondent on April 30, 2007, requesting that Respondent provide a narrative and related documents regarding: (1) his involvement with Majestic Mortgage, Jeanne Wall, and Gregory VanCamp, including W-2s, 1099s, copies of checks, contracts, agreements, and correspondence; (2) Respondent's disclosure of his involvement with Majestic Mortgage to Tower Square and WGS; (3) whether Tower Square and WGS supervised his activities, and if so, how; and (4) whether Tower Square and WGS approved his advertising and Missed Fortune presentation. Staff also requested a legible copy of the advertisement published in the "Senior Sampler." Staff requested a response by May 14, 2007. CX-1; Tr. 49-50.

Respondent received the Staff's request, but did not respond. Tr. 49. Consequently, on May 22, 2007, Staff sent a second request for the same information pursuant to Rule 8210, with a June 5, 2007, deadline for responding. CX-2; Tr. 51. Again, Respondent received the Staff's request, but did not respond. Tr. 52.

On May 25, the Staff spoke with Respondent, who said that he thought his February 26, 2007 letter was fully responsive. However, the Staff said that it was not, and that they needed the requested additional information. Respondent told Staff that he had been sick and needed more time. Tr. 52-53.

On June 28, 2007, Staff had not received a response, and again spoke with Respondent, who said he had not given the Staff's request much thought because he was no longer in the securities industry. Tr. 55. Respondent testified at the hearing that, when he received the requests, his health issues were so serious he was not sure he would survive. He felt he had done nothing wrong, and did not understand the seriousness of not responding. Tr. 80-81, 86-87. Based upon the call, Staff concluded that Respondent had determined not to respond to its 8210 requests. Accordingly, Staff initiated this Enforcement action.

In his Answer, Respondent claimed for the first time that, in addition to responding to Staff's initial request from 2006 on February 26, 2007, he had specifically responded to the Staff's April 30 follow-up request on May 12, 2007. In support of this, he attached the purported May 12 response. Respondent's letter was identical, however, to his initial response of February 2007 to Staff's earlier request. At the hearing, Respondent acknowledged that he had simply changed the date on his February 2007 response and attached the document to his Answer, although he could not explain why. Tr. 84, 88-90.

IV. Discussion

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power. See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because [FINRA] lacks subpoena power over its members, a failure to provide information fully and promptly undermines [FINRA]'s ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exchange Act Release No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information). When an individual fails to provide requested documents and information, FINRA's ability to perform its regulatory responsibilities is subverted. Joseph P. Hannan, Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

Here, Respondent is charged with failing to respond to Staff's April 30, 2007, and May 22, 2007, requests for information and documents. Respondent acknowledges that he did not respond to these requests. Respondent suggested at the hearing that certain requests were a "fishing expedition" or "not relevant." Tr. 89-90. However, it is well settled that respondents cannot dictate the terms and conditions under which they will furnish information, nor can they take it upon themselves to determine whether information requested is material to a FINRA investigation of their conduct. Hannan, 1998 SEC LEXIS 1955, at *11 ("a [FINRA] member may not second guess or impose conditions on [FINRA]'s request for information"). Moreover,

a belief that FINRA does not need the information provides no excuse for a failure to provide it. Dennis A. Pearson, Jr., Exchange Act Release No. 54913, 2006 SEC LEXIS 2871 (Dec. 11, 2006)(citation omitted).

In any event, the relevance of the requested information was clear. Staff was investigating suitability concerns arising from Respondent's seminars advocating that investors, including seniors, should consider refinancing their homes and investing the proceeds in securities products. The Staff was also investigating whether Respondent's activities were disclosed to his member firm, and whether that firm supervised his activities. Finally, the Staff was investigating the role of others working with Respondent.

At the hearing, Respondent offered to answer any questions that the Staff wanted to ask. Tr. 90. This offer came too late. "[R]ecipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot." Charles C. Fawcett, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *18 (Nov. 8, 2007). Staff should not have to bring a disciplinary proceeding to obtain responses to its requests for information. Dep't of Enforcement v. Steinhart, No. FPI020002, 2003 NASD Discip. LEXIS 23, at *13 (N.A.C. Aug. 11, 2003). Accordingly, by failing to respond to requests for documents and information, the Respondent violated Rules 8210 and 2110.³

V. Sanctions

Enforcement argues that a bar is the appropriate sanction in this case; Respondent stated that he was willing to take whatever sanction the Panel felt appropriate. Tr. 90, 124. Under FINRA's Sanction Guidelines, "If the individual did not respond in any manner, a bar should be

³ A violation of Rule 8210 is also a violation of Rule 2110. Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000).

standard. Where mitigation exists, or the person did not respond in a timely manner, consider suspending the individual in any or all capacities for up to two years.”⁴

Here, Respondent failed to respond in any manner to Staff’s April 30, 2007, and May 22, 2007, requests for documents and information. Any mitigation that might arise from Respondent’s illness is far outweighed by his misrepresentation in his Answer to the Complaint that he had responded to these requests on May 12, 2007, which the Panel views as an aggravating factor. Respondent’s belated offer to provide answers at the hearing is also not mitigating. Accordingly, Respondent is barred from association with any FINRA member in any capacity for failing to provide information requested pursuant to Rule 8210.⁵

VI. Conclusion

Respondent is barred from association with any member firm in any capacity for failing to respond to requests for information and documents, in violation of Rules 8210 and 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

HEARING PANEL

By: Sara Nelson Bloom
Hearing Officer

Copies to: Eddmon Mark Hodge (via electronic mail and first-class mail)
Heather Hawker, Esq. (via electronic mail and first-class mail)
Helen Barnhill, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

⁴ Guidelines, at p. 35 (2007 ed.).

⁵ The Hearing Panel has considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.