

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DARRELL EUGENE FOX  
(CRD No. 1360248),

Respondent.

Disciplinary Proceeding  
No. 20090195518

Hearing Officer – LBB

**HEARING PANEL  
DECISION**

October 3, 2011

**Respondent is barred from associating with any member firm in any capacity for failing to produce documents and information requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In addition, Respondent is ordered to pay the costs of this proceeding.**

*Appearances*

Joseph P. Darcy, Esq., Principal Attorney, and Scott M. Andersen, Esq., Director, New York, New York, for the Department of Enforcement.

Darrell Eugene Fox, *pro se*.

**DECISION**

The Department of Enforcement (“Enforcement”) filed a one-cause Complaint in this disciplinary proceeding on March 28, 2011, charging Respondent Darrell Eugene Fox (“Respondent”) with failure to provide documents and information requested by FINRA staff pursuant to FINRA Procedural Rule 8210, thereby violating Rule 8210 and FINRA Conduct Rule 2010. Respondent filed an answer on May 18, 2011. The answer primarily addressed the issues that were the subject of the investigation that led to the FINRA Procedural Rule 8210 requests rather than Respondent’s alleged failure to provide documents and information, and waived a hearing. At a pre-hearing conference of June 8, 2011, Respondent confirmed that he

did not want a hearing, and the Hearing Officer ordered that the matter would be decided by a hearing panel based on a written record.

Enforcement made its evidentiary submission on July 19, 2011. Respondent filed a reply on July 25, 2011. The matter has been decided by a Hearing Panel composed of two current members of the District 8 Committee and a Hearing Officer.<sup>1</sup>

## **I. Respondent**

Respondent entered the securities industry in 1985, and was associated with various FINRA member firms until 2009. He was registered with member firm Sigma Financial Corporation (“Sigma”) from September 2005 until September 2, 2009. Respondent has not been registered with a member firm since September 2009. CX-1.

Although Respondent is not registered with a FINRA member firm, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because the Complaint was filed within two years after the termination of his registration with a member firm, and it charges him failing to respond to Rule 8210 requests issued within two years following the termination of his registration with a member firm.

## **II. Findings of Fact**

Sigma filed a Form U5 on September 2, 2009, reporting that Respondent’s employment had been terminated for borrowing money from customer CW. CX-1, CX-3. During the investigation concerning the circumstances of Respondent’s receipt of money from CW, an Enforcement Case Manager issued four Rule 8210 requests that are the subject of this proceeding.

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<sup>1</sup> Enforcement’s evidentiary submission consisted of 14 exhibits and the declaration of Robert K. Butani, a Case Manager with FINRA’s Department of Enforcement. References to the exhibits provided by Enforcement are cited as “CX-\_\_\_.” References to the Case Manager’s declaration are cited as “Butani Decl. ¶ \_\_\_.” CX-5 is a transcript of Respondent’s on-the-record testimony of November 19, 2010. The pages from the testimony are cited as “CX-5 at Tr. \_\_\_.” Respondent’s submission did not include evidence, and was not submitted under oath. It also did not specifically address the issues in the Complaint, and is not cited in this Decision.

After receiving a statement from Respondent concerning his receipt of funds from customer CW, Enforcement sent a request for information to Respondent on April 8, 2010, pursuant to Rule 8210. Among other information, the Rule 8210 request directed Respondent to submit bank account statements for the deposit of the checks into his bank account. CX-4; Butani Decl. ¶ 2. Respondent responded on April 22, 2010. His response included the first pages of account statements for an account (“Joint Account”) at JPMorgan Chase Bank in the name of Respondent and VF, Respondent’s wife, for April 19 through May 20, 2008, and July 24 through August 22, 2008. CX-4(a).<sup>2</sup>

Enforcement took Respondent’s testimony in an on-the-record interview (“OTR”) on November 19, 2010. CX-14. Respondent testified that he had shared with CW that he was having financial problems, and that CW had made gifts to him of \$13,300. CX-5 at Tr. 35, 37, 40, 62, 82-83, 149; CX-2. He testified that he had deposited most of the money in the Joint Account, and used the money to pay bills. Tr. 76, 128, 131-132; CX-2. At the OTR, Enforcement requested the full account statements for which Respondent had produced partial statements (“Account Statements”), and told Respondent that it would issue a request for the documents pursuant to Procedural Rule 8210. CX-5 at Tr. 134. Respondent also testified at his OTR that he no longer resided at the address listed in the Central Registration Depository (“CRD address”), and provided an alternative address as his current address. CX-5 at Tr. 24.

On November 23, 2010, Enforcement sent a request to Respondent, pursuant to FINRA Procedural Rule 8210, requesting the Account Statements, as well as copies of checks or wires for more than \$500 that were issued from the Joint Account for the periods covered by the Account Statements. The request was sent to Respondent at the alternative address and by e-mail. Respondent was directed to supply the documents by December 8, 2010. CX-6;

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<sup>2</sup> Respondent is not charged with failure to respond to the April 2008 request for information.

Butani Decl. ¶¶ 2, 3. Respondent did not respond by the date required by the request.

Butani Decl. ¶ 5.

On December 10, 2010, Enforcement sent another request (“Second Request”) for documents and information to Respondent at his CRD address and the alternative address, by certified and first-class mail, and by e-mail. The Second Request directed Respondent to submit the account statements requested in the November 23 request, and directed Respondent to provide additional information, including information concerning potential creditors, settlements, collection proceedings, judgments, and liens.<sup>3</sup> The Second Request directed Respondent to submit the documents and information by December 21, 2010. Enforcement received a return receipt for the certified mailing to the alternative address, signed by VF. Butani Decl. ¶¶ 2, 3; CX-7(a). Enforcement did not receive the documents and information by the December 21 deadline, or thereafter. Butani Decl. ¶ 9.

In response to the December 10, 2010, request for information, VF sent an e-mail to the Case Manager on December 20, 2010. She represented that it was her practice to shred documents after one year, so Respondent could not provide the Account Statements from 2008. She also said she had shredded documents concerning credit cards, mortgage, equity line, loans, and insurance policies for 2008. She added a statement from Respondent concerning the allegations made by CW. Apparently in response to the Rule 8210 request, Respondent stated, “I am now being asked to provide highly personal information which I am not able to provide. You have my written response and my verbal deposition under oath.” CX-8; Butani Decl. ¶ 8.

On December 23, 2010, Enforcement sent a Rule 8210 request (“Third Request”) to Respondent at his CRD address, the alternative address, and by e-mail. VF signed and returned

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<sup>3</sup> In particular, Second Request directed Respondent to provide information concerning creditors, institutions at which Respondent held accounts, institutions that issued credit cards to Respondent, home equity lines of credit, retail store credit cards, mortgages, lines of credit on insurance accounts and/or policies, and automobile loans; credit balances at any creditors or institutions above; settlements with any; accounts subject to connection proceeding, and/or whether there was any judgments or liens entered against you during employment with Sigma.

the return receipt card for one of the certified mailings. CX-9, CX-9(a); Butani Decl. ¶¶ 2, 10, 11. The Third Request repeated the previous requests for the Account Statements and checks. The request noted the representation by VF that documents had been shredded, and enclosed an “Authorization for Certification and Release of Records and Information” addressed to JPMorgan Chase Bank, for Respondent’s signature, to authorize the bank to release the Account Statements and checks to Enforcement. As an alternative, the Third Request noted that Respondent could obtain the requested documents from the bank and provide them to Enforcement. CX-9. The Third Request also noted the failure to provide information concerning potential creditors, settlements, collection proceedings, judgments, or liens, and directed Respondent to provide the documents and information by January 7, 2011. Enforcement did not receive the information by January 7, 2011, or thereafter. CX-9; Butani Decl. ¶ 12.

Enforcement sent a request for documents and information (“Fourth Request”) to Respondent on February 17, 2011. The Fourth Request was sent to Respondent’s CRD address, the alternative address, and by e-mail. The documents and information sought by the request were the same as in the Third Request, and again included an authorization for Respondent’s bank to release documents to Enforcement. The Fourth Request directed Respondent to provide the documents and information by March 3, 2011. Respondent signed the return receipt card at the CRD address, and VF signed for the mailing at the alternative address. CX-11, CX-11(a), CX-11(b); Butani Decl. ¶¶ 14, 15. Respondent has not provided the documents and information sought by the Fourth Request. Butani Decl. ¶¶ 16, 18.

Enforcement received separate communications from Respondent and VF on February 28, 2011. Respondent sent a facsimile to the Case Manager, largely addressing the allegations by CW. Respondent noted, “You continue to send me ‘requests’ and as stated

previously I cannot defend myself over and over.” He also said that “all of my past creditors’ are private/personal.” CX-12; Butani Decl. ¶ 16. The facsimile did not provide the documents or information sought by the Rule 8210 requests. Butani Decl. ¶ 16.

On the same day, the Case Manager received an e-mail from VF, who said she was writing concerning Enforcement’s request for “personal information from [the Foxes’] bank, credit cards, utilities, etc.” She noted that they had received at least three certified letters from FINRA and numerous letters as well. She represented that she and Respondent did not have the information, and that the documents had been destroyed. She also stated that the documents had her personal information on them, and that she was not going to give them to anyone. CX-13; Butani Decl. ¶ 17.

Enforcement has not received any of the documents or the information sought by the four Rule 8210 requests. Butani Decl. ¶¶ 18, 19. At a pre-hearing conference on June 8, 2011, Respondent confirmed that he had received Enforcement’s requests for documents and information, and that he was not going to provide the documents and information requested. CX-14 at 7-8, 16-18, 27.

### **III. Respondent Violated FINRA Procedural Rule 8210 and Conduct Rule 2010 by Failing to Provide Documents and Information**

Procedural Rule 8210(a) provides that, for purposes of an investigation, FINRA staff shall have the right to:

- (1) require a member, person associated with a member, or person subject to FINRA’s jurisdiction to provide information ... with respect to any matter involved in the investigation ...; and
- (2) inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation....

When FINRA requests records from a member or an associated firm, the person to whom the request is directed cannot respond by stating that the records are unavailable. The recipient has “a responsibility to provide a detailed explanation of their efforts to date to obtain the

information requested and the problems they encountered.”<sup>4</sup> Respondent has not said that the records are not available from his bank, but he has refused to provide them, and continues to refuse. His refusal to obtain and provide the records from the bank has “subvert[ed] [FINRA’s] ability to carry out its regulatory functions.”<sup>5</sup> Respondent’s failure to provide the Account Statements and checks violated FINRA Rules 8210 and 2010.<sup>6</sup>

Respondent’s failure to provide the information that Enforcement requested concerning potential creditors, settlements, collection proceedings, judgments, or liens also violated Rules 8210 and 2010. Respondent has not explained the failure to provide the information, except to say that information about creditors is “private/personal.” While documents may have been shredded, he has not said that he cannot obtain the information, nor has he said that he does not know any of the information requested. Respondent’s assertion of privacy concerns is not a defense.<sup>7</sup> In fact, Rule 8210 expressly provides that FINRA has the right to inspect the accounts of an associated person. In addition, some of the information might be expressly reportable on Respondent’s Form U4 if, for example, Respondent had filed a bankruptcy petition.<sup>8</sup>

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<sup>4</sup> *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at \*23 (Jan. 30, 2009).

<sup>5</sup> *Dep’t of Enforcement v. Bello*, No. CAF000030, 2002 NASD Discip. LEXIS 10, at \*16 (N.A.C. June 30, 2002).

<sup>6</sup> A violation of FINRA Procedural Rule 8210 is also a violation of FINRA Conduct Rule 2010. *Dep’t of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at \*5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

<sup>7</sup> See *Dep’t of Enforcement v. Sturm*, No. CAF000033, 2002 NASD Discip. LEXIS 2 (N.A.C. Mar. 21, 2002) (barring respondent for failure to produce joint tax returns, personal bank records, and passports); *Dist. Bus. Conduct Comm. v. Chlowitz*, No. C02980025, 1999 NASD Discip. LEXIS 31 (N.A.C. Nov. 4, 1999) (barring respondent for failing to produce tax returns, despite claims of invasion of privacy); *Dist. Bus. Conduct Comm. v. Goldstein*, Complaint No. C02950053, 1997 NASD Discip. LEXIS 50 (N.B.C.C. Aug. 28, 1997).

<sup>8</sup> Question 14K required Respondent to report whether, in the previous 10 years, Respondent had “made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition.” Question 14M required Respondent to report whether he had any unsatisfied judgments or liens against him. Respondent answered “No” to both questions. CX-1. Enforcement represents that one of the purposes for its requests concerning financial information was to determine whether Respondent “made inaccurate statements on Forms U4 regarding creditor information, settlements, collection proceedings and judgments or liens. Department of Enforcement’s Memorandum of Facts and Law in Support of Complaint, at 12.

By failing to provide documents and information requested pursuant to FINRA Procedural Rule 8210, Respondent violated FINRA Procedural Rule 8210 and Conduct Rule 2010.

#### **IV. Sanctions**

The FINRA Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.<sup>9</sup> Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years.

Respondent has failed and refused to provide documents and information requested by four Rule 8210 requests. There are no mitigating factors. A bar is the appropriate sanction.

#### **V. Conclusion**

Respondent Darrell Eugene Fox is barred from associating with any member firm in any capacity for failure to produce documents and information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In addition, Respondent is ordered to pay costs in the amount of \$750, which is an administrative fee. The bar will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.<sup>10</sup>

#### **Hearing Panel**

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Lawrence B. Bernard  
Hearing Officer

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<sup>9</sup> *FINRA Sanction Guidelines* 33 (2011).

<sup>10</sup> 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.



Copies to: Darrell Eugene Fox (*via overnight courier and first-class mail*)  
Joseph Darcy, Esq. (*via electronic and first-class mail*)  
Scott M. Andersen, Esq. (*via electronic and first-class mail*)  
David R. Sonnenberg, Esq. (*via electronic mail*)