

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RONALD MOSCHETTA
(CRD No. 1100365),

Respondent.

Disciplinary Proceeding
No. 2010024917601

Hearing Officer – SNB

HEARING PANEL DECISION

October 15, 2013

Respondent is barred from associating with any FINRA member firm in any capacity for failing to completely respond to requests for documents, in violation of FINRA Rules 8210 and 2010.

Appearances

Vaishali Shetty, Esq., and Jessica Dennehy, Esq., for the Department of Enforcement.

Ronald Moschetta, *pro se*.

DECISION

I. Introduction

This case involves Respondent Ronald Moschetta’s failure to fully respond to FINRA Staff’s requests for documents in connection with its investigation into whether Respondent misused customer funds intended for a private placement. FINRA Staff (“Staff”) made repeated requests, beginning in February 2011, and granted several extensions of time in response to Respondent’s requests. Despite his repeated promises, Respondent never fully complied, failing to produce key documents that he admitted he had. As a result, Staff was unable to determine whether Respondent engaged in unauthorized transactions, and was unable to trace customer funds to determine whether Respondent converted them.

When Respondent failed to produce the documents despite repeated Staff extensions and accommodations, the Department of Enforcement (“Enforcement”) initiated this disciplinary proceeding, charging Respondent with violating FINRA Rules 8210 and 2010.¹ Even then, Respondent failed to produce the requested documents.

A hearing was held on May 2, 2013, in New York, New York.² For the reasons set forth below, the Hearing Panel finds, based on a preponderance of the evidence, that Respondent engaged in violative conduct as alleged in the Complaint. The appropriate sanction is a bar.

II. Jurisdiction

Respondent first became registered with FINRA as a General Securities Representative in 1983. From November 2001 until July 2009, Respondent was registered with former FINRA member firm Strasbourger Pearson Tulcin Wolff Inc. (“the Firm”), where he later became the Chief Executive Officer.³ In early July 2009, the Firm filed a Form BDW Uniform Request Withdrawal from Broker-Dealer Registration (“Form BDW”), indicating that Respondent was the Custodian of Records for the Firm.⁴ Several days later, the Firm was expelled for failing to pay fines and costs.⁵ From September 2009 through September 2010, Respondent was registered with FINRA member firm Todd and Company, Inc. (“Todd”).⁶

Respondent is currently not registered with a FINRA member firm. However, Respondent is subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because the complaint: (1) was filed within two years

¹ Enforcement filed the complaint with the Office of Hearing Officers on September 5, 2012.

² Enforcement’s exhibits CX-1 through CX-25 and Respondent’s exhibits RX-1 through RX-3 were admitted into evidence. Tr. 173-174 (Moschetta).

³ CX-1, CX-2; Tr. 25, 27 (Tymon); Tr. 127 (Moschetta).

⁴ CX-2; Tr. 26 (Tymon).

⁵ *Id.*

⁶ CX-1; Tr. 30 (Tymon); 126, 128-129 (Moschetta).

after the termination of his registration with a member firm; and (2) charges him with failing to respond to requests for information during the two-year period following that termination.

III. Findings of Fact - Respondent Provided an Incomplete Response to FINRA's Document Requests

In 2010, Staff opened a cause examination concerning a complaint from customer FE that Respondent engaged in unauthorized transactions.⁷ Staff later expanded its examination to include whether Respondent misused \$3 million in investor funds. These funds were intended to be invested in Marina Acquisition 1 LLC, ("Marina"), a private placement to fund the purchase of a marina. Staff learned that although the private placement did not close, some of the investors did not receive a refund of their investment.⁸

As part of its investigation, on February 25, 2011, Staff sent Respondent a letter requesting documents and information.⁹ Specifically, Staff requested new account documents, account statements and order tickets for customer FE.¹⁰ Staff also requested subscription agreements, investor questionnaires, and private placement memoranda relating to FE's investments with Respondent, as well as telephone records for calls to or from FE, communications between the Firm and its clearing firm, and monthly bank statements for any Marina accounts, including specified accounts at Bank of New York and Wilmington Trust Company.¹¹

⁷ Tr. 25 (Tymon).

⁸ Tr. 35-37, 104, 109 (Tymon); Tr. 146 (Moschetta); CX-17.

⁹ CX-3. Consistent with his designation as the Firm's Custodian of Records in the Firm's Form BDW requesting withdrawal from registration, Respondent retained the Firm's records after it ceased operations. CX-2.

¹⁰ *Id.*; Tr. 44 (Tymon).

¹¹ CX-3.

Respondent failed to respond to the request in any manner by the March 11, 2011 due date.¹² Accordingly, Staff sent a second request for the same documents on March 15, 2011.¹³ On March 17, 2011, Respondent sent Staff an email confirming his receipt of the request stating that the documents were in storage and claiming he could not access them “at this point.”¹⁴

Staff responded to the email, emphasizing Respondent’s obligation to respond.¹⁵ Respondent confirmed that he had the Firm’s documents and said, “if you want I will deliver the documents to your office.” Staff immediately confirmed that it wanted the requested documents delivered to FINRA offices no later than March 25, 2011.¹⁶

On March 19, 2011, Respondent sent Staff an email again confirming that the documents were in storage and stating that he was occupied with other regulatory matters and would not return to New York until March 24, 2011. He also confirmed that “if required by you I will have a delivery of all [Firm] files to your office for you to review from storage.”¹⁷ When Staff asked Respondent how many boxes of documents he meant, Respondent said there were 40 to 60 boxes. Staff indicated that it did not want all of the Firm’s documents.¹⁸ However, in order to accommodate Respondent, Staff revised its document request to make the production of documents staggered, with the most important documents due first, on March 25, 2011.¹⁹

Specifically, Staff determined that the Marina bank statements were the most important. Staff was concerned about the disposition of what appeared to be \$3 million in customer funds,

¹² Tr. 46 (Tymon).

¹³ Tr. 49 (Tymon); CX-4, CX-5.

¹⁴ CX-6.

¹⁵ *Id.*

¹⁶ Tr. 52 (Tymon); CX-6.

¹⁷ CX-7, at 89.

¹⁸ Tr. 53-54 (Tymon).

¹⁹ Tr. 54 (Tymon); CX-7, at 91, 96.

because it learned that the private placement did not close, and some of the investors had not been reimbursed.²⁰ Respondent initially claimed that FINRA already had the bank statements. When Staff responded that it did not, Respondent did not dispute it.²¹ Respondent confirmed that the remainder of the requested documents were “in the files,” except for the phone records, which he would obtain.²²

When Respondent missed the March 25, 2011 deadline for the production of the bank statements, Staff sent him a reminder on March 28, 2011.²³ Respondent replied that he would not be in the office until March 31, 2011, so the production would have to “wait until then.”²⁴

Over the next month, Staff sent a number of emails inquiring about the status of the production. Respondent kept stalling, stating that he would “get to it next week” and “I will call you this afternoon”.²⁵ He failed to produce any of the requested documents.

Having received no response to its requests for documents, Staff issued a Rule 8210 request for Respondent’s on-the-record testimony (“OTR”).²⁶ Respondent appeared and testified on May 5, 2011. At first, Respondent claimed that he did not recall the requests for bank statements and telephone records.²⁷ However, when he was shown the requests, he acknowledged that he had simply not gotten to them yet.²⁸ Respondent then stated that he would

²⁰ Tr. 39, 42, 53-54 (Tymon); CX-17, at 226.

²¹ Tr. 55-56 (Tymon); CX-7, at 3.

²² Tr. 56-57 (Tymon); CX-7, at 97.

²³ Tr. 58 (Tymon); CX-9.

²⁴ CX-9, at 108.

²⁵ CX-10, at 114, CX-11, at 121.

²⁶ Tr. 65 (Tymon).

²⁷ CX-24, at 114.

²⁸ *Id.* at 408.

produce the documents “let’s say by June.”²⁹ Accordingly, Staff granted Respondent another extension, until June 5, 2011, to produce the documents.³⁰ Staff also noted that Respondent no longer needed to provide item two, customer FE’s account statements, because Staff obtained them from the clearing firm.³¹

On May 26, 2011, Respondent sent Staff several months of incomplete bank statements from one of the two Marina private placement bank accounts.³² Respondent indicated that he was “waiting for the balance from the bank.”³³ Respondent failed to respond to any of the other requests for documents. Accordingly, on June 2, 2011, Staff sent Respondent an email confirming that the response was incomplete and did not satisfy the request.³⁴

On June 3, 2011, Respondent sent Staff an email attaching an August 2004 subscription agreement, signed by customer FE, regarding Scorpion Capital Partners.³⁵ This subscription agreement was not requested; Staff requested subscription agreements beginning in 2006. Respondent failed to produce any of the requested subscription agreements.³⁶

On June 7, 2011, Staff sent Respondent an email noting that Respondent had still failed to fully respond to Staff’s request.³⁷ Again, Respondent failed to respond to Staff’s email or respond to the request for documents.³⁸

²⁹ *Id.* at 117.

³⁰ Tr. 67 (Tymon); CX-12, at 134.

³¹ *Id.*; Tr. 68 (Tymon).

³² Tr. 74 (Tymon); CX-13.

³³ CX-13.

³⁴ CX-14.

³⁵ Tr. 76 (Tymon); CX-15.

³⁶ Tr. 76-77 (Tymon).

³⁷ Tr. 77 (Tymon); CX-16.

³⁸ Tr. 77 (Tymon).

Because Respondent failed to fully respond to Staff's Rule 8210 request, Staff sent Respondent a Wells Notice on October 11, 2011, indicating that it was recommending a disciplinary action against Respondent for failing to respond to Staff's February 25 and March 15, 2011, Rule 8210 requests for documents.³⁹ To date, Respondent has provided no further response to Staff's requests.⁴⁰

At the hearing, Respondent offered a number of shifting and far-fetched explanations for his failure to respond. He testified that he did not recall receiving the requests, in the face of his own emails acknowledging them.⁴¹ He then claimed that he did not have the requested documents, despite his repeated acknowledgement in emails and his OTR that he did.⁴² He also claimed that the documents were taken by other brokers at the Firm as part of a lock-out.⁴³ However, Respondent never mentioned the lock-out as an issue at the time of the Staff's requests. In addition, under cross-examination, Respondent admitted that the lock-out occurred in 2007, which was two years before the transactions that were the focus of the Staff's investigation.⁴⁴ Accordingly, the Panel found Respondent's explanations to be disingenuous.

IV. Conclusions of Law - Respondent Violated FINRA Rules 8210 and 2010, by Providing an Incomplete Response to Document Requests

FINRA Rule 8210(a) authorizes FINRA staff "to require a member, person associated with a member, or person subject to FINRA's jurisdiction" to provide information or access to books, records, and accounts "with respect to any matter involved in [an] investigation,

³⁹ Tr. 78 (Tymon); CX-21.

⁴⁰ Tr. 111 (Tymon).

⁴¹ Tr. 135-136 (Moschetta).

⁴² Tr. 141-145; CX-6, CX-7.

⁴³ Tr. 158 (Moschetta).

⁴⁴ Tr. 162 (Moschetta).

complaint, examination, or proceeding.” Subsection (c) further provides that “[n]o member or person shall fail to provide information or testimony ... pursuant to this Rule.”

It is undisputed that Respondent has not provided a complete response to Staff’s requests. Instead, Respondent has offered only repeated, but ultimately unfulfilled, promises to supply the information. Accordingly, the Hearing Panel finds that Respondent violated FINRA Rules 8210 and 2010.

V. Sanctions

Because FINRA lacks subpoena power, it must rely upon Rule 8210 to police the activities of its members and associated persons.⁴⁵ It is therefore well established that when a person fails to respond to FINRA’s information requests and thereby “frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets,”⁴⁶ the person commits a “serious violation justifying stringent sanctions”⁴⁷ For this reason, the Sanction Guidelines provide that, when a person provides “a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.”⁴⁸

Here, Respondent clearly failed to substantially respond to Staff’s requests for documents. His repeated, broken promises to supply the requested documents demonstrate that, although he could have complied, he chose not to. FINRA staff made multiple requests for the documents and, although significant regulatory pressure was brought to bear, the majority of the documents were not forthcoming. Moreover, the missing documents were important because,

⁴⁵ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

⁴⁶ *PAZ Securities, Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition denied*, *PAZ Secs, Inc. v. SEC*, 566 F.3d 1172 (D.C. Cir. 2009).

⁴⁷ *Elliot M. Hershberg*, Exchange Act Rel. No. 53145, 2006 SEC LEXIS 99, at *10 (Jan. 19, 2006), *petition denied*, *Hershberg v. SEC*, 210 F. App’x 125 (2d Cir. 2006).

⁴⁸ *Sanction Guidelines* 33 (2011), available at www.finra.org/sanctionsguidelines.

without them, Staff was unable to trace customer funds received by Respondent for purposes of a private placement that did not close, and it could not determine whether Respondent engaged in unauthorized transactions in customer FE's account.

Respondent's refusal to respond is sufficient to justify a bar. His disciplinary history is an aggravating factor that reinforces this.⁴⁹ Specifically, Respondent failed to disclose requested information in connection with his failure to pay an arbitration award and failed to disclose required information on a Form U4; both are non-disclosures, which make them directly relevant to Respondent's refusal to provide documents here. In addition, Respondent had been subject to state disciplinary action for allegations of fraud, among other things.⁵⁰ This disciplinary history underscores Respondent's recidivism, and the appropriateness of a bar.

The Hearing Panel also considered that Respondent was not forthcoming at the hearing. Even when presented with his own emails referencing the Staff's requests, Respondent persisted in testifying that he did not recall receiving the requests.⁵¹

Accordingly, the Hearing Panel concludes that a bar is appropriate.

VI. Order

Respondent is barred from associating with any FINRA member firm in any capacity for failing to completely respond to requests for documents, in violation of FINRA Rules 8210 and 2010.⁵² Respondent also is ordered to pay the costs of the hearing in the amount of \$2,238.14, which includes a \$750 administrative fee and the cost of the hearing transcript. The bar shall become effective immediately if this decision becomes FINRA's final action. The costs shall be

⁴⁹ *Guidelines* at 2.

⁵⁰ CX-1, at 21, 25, 34; Tr. 31-34 (Tymon); Tr. 130 -131 (Moschetta).

⁵¹ Tr. 133-135 (Moschetta).

⁵² The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

HEARING PANEL

Sara Nelson Bloom
Hearing Officer
For the Hearing Panel

cc: Ronald Moschetta (via email and overnight mail)
Vaishali S. Shetty, Esq. (via email and first-class mail)
David Jaffe, Esq. (via email)
Mark P. Dauer, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)