

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM L. TATRO
(CRD No. 808176),

Respondent.

Disciplinary Proceeding
No. 2011026874301

Hearing Officer—Andrew H. Perkins

HEARING PANEL DECISION

December 10, 2013

Respondent failed to respond to requests for information and documents, in violation of FINRA Rules 8210 and 2010. Respondent is barred and ordered to pay costs.

Appearances

For the DEPARTMENT OF ENFORCEMENT, Complainant, Margaret M. Tolan, Esq., Elena Salzman Kindler, Esq., and Danielle I. Schanz, Esq., New York, New York.

Respondent William L. Tatro appeared pro se.

DECISION

I. INTRODUCTION

FINRA's Department of Enforcement initiated this disciplinary proceeding against William L. Tatro¹ because he failed to respond to two requests for information FINRA staff issued in connection with its investigation to determine whether he had violated federal securities laws or FINRA's conduct rules.

Tatro admitted that he received both information requests, but did not provide any of the requested information and documents because he had filed for bankruptcy. Tatro

¹ Respondent also is known as William Lewis Tatro, IV.

claimed that he believed the bankruptcy court had stayed all actions against him, including his obligation to provide information and documents to FINRA.

The Hearing Panel rejected Tatro's affirmative defense. The Hearing Panel concluded that Tatro violated FINRA Rules 8210 and 2010 by failing to provide the information and documents FINRA staff requested and that Tatro should be permanently barred from associating with any FINRA member firm in any capacity.²

II. BACKGROUND AND JURISDICTION

FINRA initiated the investigation that led to this disciplinary proceeding after it received some customer complaints and a series of Uniform Termination Notices for Securities Industry Registration (Forms U5) filed by Tatro's former broker-dealer, First Allied Securities, Inc. The amended termination notices disclosed numerous customer complaints alleging fraud and sales practice violations.³ Enforcement ultimately identified more than 80 individuals who might be victims of Tatro's alleged misconduct. To investigate the customer complaints, Enforcement sent Tatro requests for information and documents in August 2012. Tatro did not provide Enforcement with any of the requested information or documents. Accordingly, Enforcement initiated this disciplinary proceeding, charging Tatro with failing to respond to the information requests, in violation of FINRA Rules 8210 and 2010.

Enforcement filed the complaint with the Office of Hearing Officers on October 17, 2012. Tatro filed an answer on November 14, 2012, in which he requested a hearing.

² Rule 8210 requires members and associated persons to provide information and documents in connection with any FINRA investigation, complaint, examination, or proceeding. FINRA Conduct Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade. Rule 0140(a) extends the applicability of FINRA rules governing members to their associated persons.

³ See Joint Exhibit (JX) 1, which contains copies of several Forms U5 First Allied filed in 2012.

The Hearing Panel, composed of a Hearing Officer and two current members of FINRA's District 10 Committee, held a hearing in New York, New York, on September 10, 2013.

Article V, Section 4 of FINRA's By-Laws provides jurisdiction for this disciplinary proceeding. Enforcement filed the complaint, and issued the Rule 8210 requests for information and documents that are the subject of the complaint, within two years after First Allied filed a Form U5 Amendment that disclosed that Tatro may have violated securities laws or FINRA's conduct rules while he was associated with First Allied.⁴

III. FINDINGS OF FACT

A. William L. Tatro

Tatro began his securities career in 1975. Over the succeeding years he worked at six different broker-dealers before he joined First Allied in November 2003.⁵ With First Allied, he was registered as General Securities Representative and a General Securities Principal until September 9, 2010.⁶ After he left First Allied, Tatro operated Biltmore Wealth Advisors, LLC, an investment advisory firm in Phoenix, Arizona.⁷

⁴ JX-1, at 224 (Form U5 Amendment dated July 17, 2012).

⁵ Complainant's Exhibit (CX) 11, at 2-7.

⁶ CX-1, at 1.

⁷ Tatro was registered as an investment advisor representative (RA) with Biltmore from April 2007 until August 2012. CX-11, at 1.

B. Enforcement's Investigation

Enforcement sent Tatro two Rule 8210 requests for information and documents in August 2012.⁸ Tatro admits that he received both requests and that he did not supply any of the requested information or documents.

1. First Request, Dated August 14, 2012

On August 14, 2012, Enforcement sent Tatro a request for information and documents ("First Request"). The First Request included two attachments: (1) a list of 85 individuals and entities that Enforcement believed had been Tatro's customers; and (2) Tatro's original Full Form U5 filed by First Allied on September 9, 2010, together with 11 Form U5 Amendments. In general, the request centered on his dealings with the listed customers between January 2008 and August 2012. The First Request required Tatro to respond on or before August 28, 2012.⁹ Tatro received the First Request,¹⁰ but he did not provide any of the requested information or documents.

2. Second Request, Dated August 29, 2012

Enforcement renewed its request for information and documents on August 29, 2012 ("Second Request"). The Second Request included the same attachments and asked for the same information that Enforcement had asked for in the First Request. Tatro

⁸ In addition to these requests, FINRA's Central Review Group had sent Tatro two other requests for information, the first on May 18, 2012, and the second on June 4, 2012. *See* CX-1 and CX-2. Although Tatro did not provide the information requested, Enforcement did not charge him with failing to respond to these requests. At the hearing, Tatro denied ever receiving these two requests. Hearing Transcript ("Tr.") 114-16 (Tatro).

⁹ JX-1.

¹⁰ Tr. 118 (Tatro). Enforcement sent the First Request by first-class certified mail to: (1) Tatro's current residential address recorded in the Central Registration Depository ("CRD"); (2) his wife's residential CRD address in Phoenix, Arizona; and (3) his current business address for Biltmore Wealth Advisors.

received the Second Request,¹¹ but he did not provide any of the requested information or documents.

C. Tatro's Bankruptcy And His Failure To Provide Requested Information And Documents

Tatro filed a petition for bankruptcy with the United States Bankruptcy Court for the Western District of New York on July 30, 2012.¹² Tatro's bankruptcy attorney advised Elena Salzman Kindler, Senior Counsel for FINRA, of Tatro's bankruptcy case during a telephone conversation on August 28, 2012.¹³ During that conversation, Tatro's attorney confirmed that Tatro had received Enforcement's First Request dated August 14, 2012.¹⁴

Tatro's bankruptcy attorney followed up his telephone call by letter dated September 12, 2012. In the letter, he confirmed that Tatro "is presently a debtor in a Chapter 7 case under the United States Bankruptcy Code."¹⁵ He further advised that the Bankruptcy Court recently had denied a motion for relief from the automatic bankruptcy stay to permit FINRA arbitrations against Tatro to proceed.¹⁶ Tatro's bankruptcy attorney wrote:

This law firm only represents Mr. Tatro in connection with his bankruptcy case and not with regard to any securities matters. Therefore, we must leave it up to [FINRA] and Mr. Tatro or his securities counsel, to

¹¹ Tr. 119 (Tatro); CX-3.

¹² Tr. 47, 49 (FINRA Examiner).

¹³ *Id.* 47-48 (FINRA Examiner); CX-6. Tatro's residential address on the bankruptcy petition is the same as his CRD address. Tatro explained at the hearing that he maintained his address in Newark, New York, as his CRD address and as his address for the purposes of his bankruptcy proceeding, although he lived with his wife in Phoenix, Arizona. Tr. 112-13 (Tatro).

¹⁴ Tr. 50 (FINRA Examiner).

¹⁵ CX-4, at 1.

¹⁶ *Id.* Exhibit CX-9 is a copy of the transcript of the Bankruptcy Court hearing held on July 30, 2012. The automatic bankruptcy stay is set forth in 11 U.S.C. § 362(a).

determine whether ... your correspondence of August 14, 2012 ... and FINRA's follow-up communications constitute a violation of the automatic stay or are permitted by 11 U.S.C. § 362(b)(25).¹⁷

After Enforcement received the letter from Tatro's bankruptcy attorney, the staff confirmed that 11 U.S.C. § 362(b)(25) of the Bankruptcy Code permits self-regulatory organizations such as FINRA to proceed against debtors in bankruptcy as long as no monetary relief is sought.¹⁸ Enforcement then sent Tatro a Wells Notice¹⁹ dated September 21, 2012.²⁰ Enforcement gave Tatro until October 5, 2012, to submit a Wells Submission, indicating why a disciplinary action should not be brought against him for his failure to provide the information and documents the staff had requested pursuant to Rule 8210. Tatro did not make a Wells Submission.²¹

On October 10, 2012, Enforcement sent Tatro a letter, advising him that Enforcement would not seek monetary sanctions against him because he had filed for bankruptcy.²² Enforcement further clarified that both attorneys who had contacted

¹⁷ CX-4, at 1.

¹⁸ Tr. 53 (FINRA Examiner). Section 11 U.S.C. § 362(b)(25) provides in relevant part that the automatic bankruptcy stay does not bar "the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power." 11 U.S.C. § 362(b)(25)(A).

¹⁹ A Wells Notice is part of FINRA's discretionary Wells Process. Generally, if FINRA staff makes a preliminary determination to proceed with a recommendation of formal discipline, the staff either will call or write the potential respondent or counsel and inform the individual that FINRA intends to recommend formal disciplinary action. In addition, the staff informs the potential respondent of the proposed charges and the primary evidence supporting the charges. The purpose of the call or notice is to give the potential respondent an opportunity to submit a writing or "Wells Submission" that discusses the facts and applicable law and explains why formal charges are not appropriate. See Regulatory Notice 09-17 (Mar. 2009).

²⁰ JX-2.

²¹ Tr. 56 (FINRA Examiner); CX-5, at 1.

²² CX-5, at 2.

Enforcement on his behalf had stated that they did not represent Tatro in connection with FINRA's investigation and disciplinary proceeding.

Tatro responded by letter dated November 13, 2012.²³ In his response, Tatro acknowledged receipt of Enforcement's letter dated October 10, 2012, and for the first time explained that he had not provided the requested information and documents because "[he] was simply following the instructions of counsel, the mandates of the bankruptcy laws, and the correspondence from Sophia Kronic at FINRA."²⁴ Tatro went on to contest the validity of the numerous customer complaints FINRA was investigating, as well as FINRA's need for the information and documents Enforcement requested.

Tatro argued that he had produced documents relating to 44 parties who had filed arbitration claims against him. In each case, Tatro objected to FINRA's document requests and questioned FINRA's actions. Tatro directed Enforcement to obtain that information from his arbitration attorney, claiming that he had not kept copies of the documents he produced in connection with the arbitrations.²⁵

As to most of the remaining customers listed in Enforcement's Rule 8210 requests, Tatro asserted that they were never his customers or they had not filed arbitrations against him. Tatro argued that he was the victim of "an unethical and unscrupulous ambulance chasing attorney," who had solicited potential claimants by

²³ RX-1. The Hearing Officer permitted Tatro to offer a copy of his November 13, 2012 letter into evidence at the hearing although he had not included the letter as an exhibit with his pre-hearing submissions.

²⁴ RX-1, at 1. The letter from Sophia Kronic, a Case Administrator with FINRA's Dispute Resolution Department, dated September 4, 2012, was not offered into evidence. However, a copy of the letter can be found in the record; it is attached to Tatro's Response To Enforcement's Motion To Compel Production In Response To Post-Complaint 8210 Request for Information dated March 1, 2013. In material part, the Kronic letter is identical to CX-8.

²⁵ RX-1, at 2-3.

appealing “to their greed for ‘easy money,’” and who used fraudulent and abusive tactics to pressure settlements from insurance companies and broker-dealers.²⁶ At the hearing, Tatro claimed that this attorney’s campaign against him ruined his career and forced him into bankruptcy.²⁷

Tatro never provided any of the information or documents Enforcement requested.

IV. CONCLUSIONS OF LAW

A. FINRA Rule 8210

FINRA Rule 8210 requires that associated persons provide information orally or in writing with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. “FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain information concerning an associated person’s securities-related business ventures.²⁸ ... Associated persons therefore must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material.”²⁹ Delay or neglect on the part of members and their associated persons in responding to Rule 8210 requests for information and documents undermines FINRA’s ability to conduct investigations and thereby protect the public interest.³⁰

²⁶ *Id.* at 2-4.

²⁷ Tr. 134-37 (Tatro).

²⁸ *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (FINRA NAC Dec. 12, 2012).

²⁹ *Id.* at *13 (citing *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009)).

³⁰ *See, e.g., Paz Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *12-13 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

B. Tatro's Affirmative Defense Lacks Merit

Tatro does not contend that he complied with the two requests for information and documents he received in August 2012. He asserts that he did not respond because he had concluded that the bankruptcy stay relieved him of any obligation to comply with FINRA's requests. Tatro's defense is wholly without merit.

Tatro asserts that he reasonably relied on two letters in which FINRA's Dispute Resolution Department advised the claimants' attorney in two pending arbitrations that those arbitrations were stayed indefinitely as to Tatro³¹ in light of his bankruptcy petition. Each letter referenced a specific FINRA Dispute Resolution Arbitration by case number and name.³² The letters stated that, pursuant to the attached bankruptcy notice, "all matters concerning this party [Tatro] are indefinitely stayed."³³ Although the letters specifically referred to pending arbitrations in which Tatro was a party, and did not mention FINRA's disciplinary investigation or FINRA's Department of Enforcement, Tatro contends that it was reasonable for him to conclude that the letters meant that he was not obligated to respond to Enforcement's Rule 8210 requests for information. Despite the fact that Enforcement issued its 8210 requests for information after FINRA received notice of his bankruptcy, Tatro argued that his conclusion was reasonable because the earlier letters from Dispute Resolution referred to "all" matters, without limitation.³⁴

³¹ There were several claimants and Tatro had co-respondents in those arbitrations. CX-8.

³² See CX-8.

³³ *Id.*

³⁴ Tr. 88-91 (questioning and argument by Tatro).

The Hearing Panel rejects Tatro's argument. The letters he obtained in connection with the arbitration proceedings did not provide a reasonable basis for him to conclude that he need not respond to FINRA's regulatory investigation. The letters did not refer to Enforcement's investigation or the Rule 8210 requests, and they were sent from FINRA's Dispute Resolution offices, not Enforcement. In addition, the letters were issued to the same arbitration attorney who had solicited clients to file arbitration claims against Tatro and whom Tatro well knew was not involved in FINRA's regulatory investigation. The arbitration attorney was the same person Tatro alleged had unethically ruined his career and forced him into bankruptcy. There is no ambiguity that the letters referred only to a stay of the specifically identified arbitrations and had no bearing on Enforcement's Rule 8210 information requests. Tatro's argument to the contrary is specious.

The Hearing Panel also rejects Tatro's argument that his bankruptcy attorney's advice not to pay anybody or do anything else that would adversely affect his bankruptcy case warranted Tatro to conclude that he could ignore the Rule 8210 requests for information. Indeed, Tatro testified candidly, "Did he [the bankruptcy attorney] say don't respond? No."³⁵ In addition, Tatro made clear that he never asked any attorney for advice on whether he needed to respond to the Rule 8210 requests after he filed the bankruptcy petition. Tatro admitted that "[he] made these decisions on [his] own."³⁶ He did not rely on advice of counsel in refusing to cooperate.³⁷

³⁵ Tr. 163 (Tatro). Tatro stated that he only asked his bankruptcy attorney what would happen if he started paying creditors or a creditor took an action against him. Tr. 159-60.

³⁶ *Id.* at 161.

³⁷ *Id.* "I never said that [my attorneys] told me what to do. No attorney is going to tell you what to do if they don't represent you." Tr. 159 (Tatro).

Tatro refused to respond to the August 2012 requests for information. Tatro's refusals violated FINRA Rules 8210 and 2010.

V. SANCTIONS

The Hearing Panel begins its analysis to determine the appropriate sanction in this case with a consideration of FINRA's Sanction Guidelines ("Sanction Guidelines"). The Sanction Guidelines with respect to FINRA Rule 8210 provide that, absent mitigating circumstances, a bar should be the standard sanction when an individual fails to respond in any manner.³⁸ The imposition of a bar as the standard sanction for a complete failure to respond to FINRA information requests "reflects the judgment that, in the absence of mitigating factors, a complete failure to cooperate with [FINRA] requests for information or testimony is so fundamentally incompatible with [FINRA's] self-regulatory function that the risk to the markets and investors posed by such misconduct is properly remedied by a bar."³⁹

Both FINRA and the Securities and Exchange Commission recognize that a complete failure to respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests. FINRA lacks another tool, such as subpoena power, to police the activities of its members and associated persons. Rule 8210 provides the essential means for FINRA to obtain information necessary to conduct investigations and carry out its regulatory responsibilities.

³⁸ FINRA Sanction Guidelines 33 (2011), *available at* <http://www.finra.org/sanctionguidelines>.

³⁹ *Paz Sec.*, 2008 SEC LEXIS 820, at *9 (citing *Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *21-22 (Nov. 8, 2007)).

This case presents no mitigating factors to overcome the presumption that Tatro is unfit to remain in the securities industry. FINRA staff had serious concerns about Tatro's possible mistreatment of his customers. FINRA staff began investigating Tatro in approximately May 2012 after First Allied filed a Form U5 Amendment that disclosed that ten customers had complained about Tatro. Their complaints included allegations of fraud, breach of fiduciary duty, unauthorized transactions, breach of contract, negligence, and negligent or reckless failure to supervise.⁴⁰ Thereafter, FINRA staff received and reviewed numerous other Form U5 Amendments that contained references to similar customer complaints and claims. Accordingly, Enforcement reasonably sought information from Tatro to determine the validity of those claims. Tatro could not ignore Enforcement's requests because he believed the claims lacked merit or that Enforcement could obtain much of the requested information from other sources.

In addition to considering the importance of the information Enforcement sought, the Hearing Panel took into consideration that Tatro failed to accept responsibility for and acknowledge his misconduct.⁴¹ Tatro steadfastly maintained that he was under no obligation to supply the requested information and documents, and he took no steps to clarify his responsibility and clear up his so-called confusion. He neither sought the advice of a qualified attorney nor spoke to FINRA staff at any time before Enforcement initiated this disciplinary proceeding.

The Hearing Panel concludes that there is no likelihood that Tatro would comply with FINRA's conduct rules if he were allowed to re-enter the securities industry. He

⁴⁰ CX-1, at 1.

⁴¹ See Sanction Guidelines 6 (Principal Considerations in Determining Sanctions, No. 2) (directing adjudicators to consider whether a respondent accepted responsibility for or acknowledged misconduct).

intentionally disregarded Enforcement's efforts to obtain relevant and appropriate information in the course of its investigation of alleged serious misconduct and customer harm. His affirmative defense that he reasonably believed the bankruptcy stay relieved him of any obligation to respond to Enforcement was not made in good faith. Tatro pointed to no facts that could support his defense. Accordingly, the Hearing Panel concludes that a permanent bar is needed to protect the investing public and other market participants.

VI. ORDER

William L. Tatro is barred from associating with any FINRA member firm in any capacity for his failure to respond to FINRA's requests for information and documents, in violation of FINRA Rules 8210 and 2010.⁴² In addition, Tatro is ordered to pay costs of this proceeding in the amount of \$1,943.49, which costs include the hearing transcript fees and an administrative fee of \$750.

If this decision becomes FINRA's final disciplinary action, the bar shall take effect immediately. The assessed costs shall be 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.

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

⁴² The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

Copies to:

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