

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

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

MICHAEL J. MARTELLA
(CRD No. 1719329),

Respondent.

Disciplinary Proceeding
No. 2006003772301

Hearing Officer – AWH

DEFAULT DECISION

April 24, 2008

Respondent is barred from associating with any FINRA member in any capacity for failing to respond to requests for information, in violation of NASD Rules 8210 and 2110.

Appearances

Ralph Drury Martin, Esq., for the Department of Market Regulation.

No appearance by or for Michael J. Martella.

DECISION

I. Background

On November 29, 2007, the Department of Market Regulation filed the Complaint in this proceeding, alleging that Respondent Michael J. Martella failed to respond to requests for information, in violation of NASD Rules 8210 and 2110. Respondent did not file an Answer to the Complaint. On March 3, 2008, Market Regulation filed a motion for a default decision. Martella did not respond to that motion.

II. Respondent's Default

The Department of Market Regulation sent the Complaint and Notice of Complaint to Respondent on November 29, 2007, by certified and first class mail to his most current residential address listed in the Central Registration Depository ("CRD address"). Although, in July 2006, Market Regulation had been informed by Martella's former attorney that Martella was leaving the country, the attorney did not have a forwarding address for his client, and Market Regulation has no alternative address to which it could send the Complaint to Martella. On January 8, 2008, Market Regulation sent the Complaint and Second Notice of Complaint to Respondent by certified and first class mail to his most recent CRD address. Martella did not file an Answer to the Complaint.

Market Regulation served the Complaint and Notices of Complaint on Martella in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted. Pursuant to NASD Procedural Rules 9215(f) and 9269, Market Regulation's motion for a default decision will be granted, and the allegations in the Complaint, which is attached to this decision, will be deemed admitted.¹

III. Jurisdiction

Martella was first registered through a FINRA member in 1988. In January 2005, he became registered through Tradition Asiel Securities Inc. as a General Securities Representative and a Limited Representative – Equity Trader. He resigned from Tradition Asiel Securities, effective December 8, 2005, after he refused to cooperate with the firm's internal review of his actions. His registration was terminated on January 3,

¹ The factual determinations in this decision are based on the admitted allegations in the Complaint, the Declaration in Support of Motion for Entry of Default Decision, and the exhibits attached thereto.

2006. He is not currently registered or associated with any FINRA member. Because the Complaint charges him with failing to respond to FINRA staff requests for information during the two-year period following termination of his last registration, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws.

IV. Violations

The Complaint alleges that on June 14, 2006, and on July 19, 2006, FINRA staff, in the course of its investigation into whether Martella violated the anti-fraud provisions of federal securities laws and various NASD Rules in connection with trading certain securities, sent Martella, pursuant to Rule 8210, requests that he appear for an on-the-record interview at FINRA's offices to provide information with respect to the subject matter of its investigation.

FINRA staff sent the requests to him by first class mail and Federal Express to his CRD address. Because the requests were sent to him at his CRD address, pursuant to NASD Rule 8210(d), he is deemed to have received them. Furthermore, on June 30, 2006, Martella's attorney advised FINRA staff that Martella was not available to testify on July 6 as requested, but that he would be available in August. On July 10, 2006, Martella's attorney advised the staff that he had been unable to contact Martella about rescheduling the testimony. On July 13, 2006, the staff received a letter from the attorney, advising that he no longer represented Martella and that Martella had accepted employment outside the United States and would be leaving the country within days. Accordingly, Martella had actual notice of the first request for his appearance for

testimony. By failing to appear for testimony as requested, Martella violated NASD Rules 8210 and 2110.

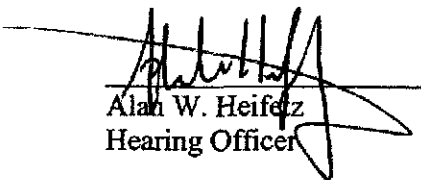
V. Sanctions

Under the Sanction Guidelines a bar is standard for failure to respond in any manner to requests for information. *Sanction Guidelines*, at 35. Here Martella failed to provide any testimony, and there is no evidence of any mitigating circumstance that would justify a sanction less than a bar.

VI. Conclusion

Michael J. Martella is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information, in violation of NASD Rules 8210 and 2110. The bar will become effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.



Alan W. Heifez
Hearing Officer

Copies to:

Michael J. Martella (*via first class mail & Overnight Courier*)

Ralph Drury Martin, Esq. (*via first class & electronic mail*)

James J. Nixon, Esq. (*via first class & electronic mail*)

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

MICHAEL J. MARTELLA (CRD No. 1719329)

Respondent.

DISCIPLINARY PROCEEDING
No. 2006003772301

HEARING OFFICER:

COMPLAINT

Upon information and belief, the Department of Market Regulation alleges as follows:

Background

1. The staff of the Department of Market Regulation is investigating whether, during 2005, persons associated with members violated the anti-fraud provisions of federal securities laws and various NASD Rules in connection with trading in the securities of Cameron International, Inc.

2. Respondent Martella is a subject of that investigation. Pursuant to NASD Procedural Rule 8210, the staff sought investigative testimony from Martella. Martella failed to appear for testimony.

Respondent

3. Martella was first registered with NASD in 1998. He was registered with nine other firms before joining Tradition Asset Securities Inc. in January 2005. Martella resigned

from Tradition Asiel Securities effective December, 8, 2005, after failing to cooperate with the firm's internal review of his actions. Martella has not been registered with a FINRA member firm since then.

Jurisdiction

4. FINRA has jurisdiction over this matter under Article V, Section 4(a), of NASD's By-Laws. Section 4(a) provides for continued jurisdiction over a person whose association with a member has been terminated, for two years after the effective date of termination of registration, "based upon conduct which commenced prior to the termination" of registration, or "upon such person's failure, while subject to the NASD's jurisdiction as provided herein, to provide information requested by the NASD pursuant to the Rules of the Association."

FIRST CAUSE OF ACTION

Violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 (Failure to provide information)

5. The foregoing allegations are re-alleged and incorporated by reference.
6. On June 14, 2006, pursuant to NASD Procedural Rule 8210, the staff sent Martella a request, by Federal Express and U.S. mail, to appear for an on-the-record interview at NASD's offices in Rockville, Maryland, on July 6, 2006. Federal Express delivered the June 14 request was to Martella's current CRD address, which was his residence at an apartment building in New York City. An employee at the front desk of the building signed for the letter. The U.S. Postal Service delivered its copy of the June 14 request to the same address, where someone at the building also signed for it.
7. On June 30, 2006, Martella's attorney advised the staff that Martella was not available to testify on July 6, but said that Martella would be available in August. The attorney agreed to consult with Martella to find a date to reschedule the interview.

8. Between June 30 and July 6, neither Martella nor his attorney contacted the staff, and Martella did not appear to testify on July 6.

9. On July 10, 2006, Martella's attorney advised the staff that he had been unable to contact Martella about rescheduling the testimony.

10. On July 13, 2006, the staff received a letter from Martella's attorney, advising that he no longer represented Martella and that Martella had accepted employment outside the United States and would be leaving the country within days.

11. From July 14 through 17, 2006, the staff left messages for Martella on his cell phone and made unsuccessful efforts to contact Martella through his former attorney.

12. On July 19, 2006, pursuant to NASD Procedural Rule 8210, the staff sent another letter to Martella's current CRD address, by Federal Express and U.S. mail, requesting that Martella appear in Rockville to testify on August 3, 2006. Federal Express delivered the July 19 request to Martella's CRD address, which was his residence at an apartment building in New York City. An employee at the front desk of the building signed for the letter, but Federal Express later returned it to the staff with a notation that Martella had moved. The U.S. Postal Service returned its copy of the July 19 letter to the staff, advising, "Not Deliverable as Addressed - Unable to forward."

13. On August 3, 2006, Martella failed to appear to testify.

14. Accordingly, Martella violated NASD Procedural Rule 8210 and also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

RELIEF REQUESTED

WHEREFORE, the Department of Market Regulation respectfully requests:

- A. an order that one or more of the sanctions provided under NASD Rule 8310(a), including a permanent bar from association with any member of FINRA, be imposed; and
- B. an order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Respectfully submitted,

Date:

11/29/07



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