

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROGER D. FLEMING
(CRD No. 1102431),

Respondent.

Disciplinary Proceeding
No. 2006006603701

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

September 30, 2008

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

Appearances

William Brice La Hue, Esq., Atlanta, GA, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On April 18, 2008, the Department of Enforcement (“Enforcement”) filed a Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Roger D. Fleming (“Respondent”) violated Rules 8210 and 2110 by failing to respond to FINRA Staff requests for information. Respondent did not file an Answer to the Complaint. On July 28, 2008, Enforcement filed a Motion for Entry of Default Decision, supported by the affidavit of William Brice La Hue, and four exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its Motion.

II. Respondent's Default

On April 18, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent, by certified and first-class mail, at his last known residential address as listed in the Central Registration Depository and an alternative address (the "Alternative Address").² Respondent did not file an Answer to the Complaint. In the same manner, on May 21, 2008, Enforcement served the Complaint and Second Notice of Complaint on Respondent. Once more, Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address and the Alternative address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered with Ameriprise Financial Services, Inc. (Ameriprise"), as a general securities representative and investment company and variable contracts products representative from October 1999 until April 2005. On October 10, 2006, Ameriprise filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Respondent. The amended Form U5 disclosed a customer complaint alleging that Respondent engaged in conduct that may have violated FINRA Rules.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because the Complaint alleging failure to provide information was filed within two-years following the filing of the amended Form U5 by Ameriprise disclosing that a customer Respondent may have

² The Complaint was not served on two addresses shown on a LexisNexis search because staff determined that these addresses pre-dated the CRD Address.

engaged in actionable conduct under FINRA Rules. Specifically, a customer had questioned the suitability of an investment and the allocation of a check.

IV. Violation - Failure to Respond

The Complaint alleges that on February 5, 2007, FINRA Staff ("Staff") sent Respondent, via first-class mail to Respondent's CRD address, a request for information pursuant to Rule 8210 concerning the allegations disclosed in the amended Form U5 filed by Ameriprise referenced above. On March 6, 2007, Staff again sent this request via first class mail to Respondent's CRD address and the Alternative address. Staff then conducted a LexisNexis search for additional addresses and found two other possible addresses for Respondent (the "LexisNexis addresses"). Staff sent third and fourth requests for information pursuant to Rule 8210 via first class mail to Respondent's CRD address, the Alternative address, and the LexisNexis addresses on May 7, 2007 and June 26, 2007. Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information 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.³ Here, although Respondent received valid constructive notice of the Staff's request,⁴ he failed to respond.

³ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC 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, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to effectively conduct its investigations, and emphasizing that [FINRA] members and associated persons must fully cooperate with requests for information).

⁴ See David I. Cassuto, Exch. Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

Therefore, the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 8210 and 2110.

V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines at p. 35 (2007 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity.

VI. Conclusion

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to:

Roger D. Fleming. (*via overnight and first-class mail*)
William Brice La Hue, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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COMPLAINT

The Department of Enforcement alleges:

1. Respondent Roger D. Fleming entered the securities industry in March 1986 with a FINRA member, and became registered as an investment company and variable contracts products representative. Fleming was also registered as a general securities representative with a FINRA member in May 1986. Fleming was registered with Ameriprise Financial Services, Inc. ("Ameriprise") as a general securities representative and an investment company and variable contracts products representative from October 1999 until April 2005. Subsequently, from July 2005 until January 2006, Fleming was registered by MML Investors Services, Inc. as a general securities representative and an investment company and variable contracts products representative.
2. On or about October 10, 2006, Ameriprise filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Fleming. The amended Form U5 disclosed a complaint alleging that Fleming had engaged in conduct while at Ameriprise that was a potential violation of the NASD Rules. Fleming is not currently registered with a FINRA member. However, in view of the amended Form U5 filed on October 10, 2006, Fleming remains subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws until October 9, 2008.

SUMMARY

3. Fleming failed to respond to four requests, issued pursuant to NASD Procedural Rule 8210, for information made by FINRA staff in connection with its investigation of allegations of potential NASD Rule violations disclosed on the amended Form U5 filed in October 2006.

CAUSE OF ACTION

NASD Conduct Rule 2110 and NASD Procedural Rule 8210

(Failure to Respond to Information Requests)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. In October 2006, FINRA initiated an investigation into the allegations on the amended Form U5 filed by Ameriprise on behalf of Fleming, including but not limited to whether he participated in private securities transactions without giving Ameriprise prior written notice of his intent to engage in such activities and failed to obtain approval of his participation in such transactions.
6. On February 5, 2007, FINRA sent Fleming a letter via first class mail addressed to his address as listed in the CRD system (102 Skylark Drive, Murfreesboro, Tennessee 37129). The February 5, 2007 letter requested, pursuant to NASD Procedural Rule 8210, that Fleming provide a detailed, written statement regarding the allegations disclosed on the amended Form U5 filed by Ameriprise. The February 5, 2007 letter was returned to FINRA marked "Unable to Forward," but it provided an alternate address in Watertown, Tennessee.
7. On March 6, 2007, FINRA sent Fleming another letter via first class mail addressed to his CRD address and the Watertown address. The March 6, 2007 letter requested that Fleming provide a detailed, written statement regarding the allegations disclosed on the amended Form U5 filed by Ameriprise. The March 6, 2007 letter cited NASD Procedural Rule 8210, and required that Fleming provide the requested statement to FINRA no later March 27, 2007. Both letters sent to the two separate addresses were returned to FINRA.
8. FINRA then conducted a LexisNexis search for additional addresses and found two other possible addresses for Fleming. Thereafter, on May 7, 2007, a third letter was sent via first class mail to

Fleming's CRD address, the Watertown address, and the two other addresses. The May 7, 2007 letter again requested that Fleming provide a detailed, written statement regarding the allegations disclosed on the amended Form U5 filed by Ameriprise. The letters cited NASD Procedural Rule 8210, and requested that Fleming provide the requested statement no later than May 28, 2007. All but one of the letters was returned to FINRA.

9. On June 26, 2007, FINRA sent another letter by first class and certified mail to Fleming's CRD address, the Watertown address, and the two addresses obtained through the LexisNexis search. The June 26, 2007 letter once more requested that Fleming provide the previously requested written statement. The letters cited NASD Procedural Rule 8210, and set a July 10, 2007 deadline for the production of the information. The U.S. Postal Service also returned all of these letters to FINRA with the letters sent by certified mail indicating either that the forwarding time had expired or that delivery was attempted *i.e.* "attempted not known."
10. As of the date hereon, Fleming has not responded to FINRA's requests for a written statement regarding the allegations disclosed on the amended Form U5 filed by Ameriprise. Fleming's failure to submit the requested written statement impeded FINRA's investigation and prevented FINRA from completing its regulatory responsibility to fully investigate potential rule violations.
11. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Fleming.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.
- B. Order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date:

4/15/08


William Brice La Hue

Senior Regional Counsel

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