

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KURT H. JOHANSSON
(CRD No. 708249),

Respondent.

Disciplinary Proceeding
No. 2006007018301

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

February 4, 2009

Respondent is barred for his failure to respond to requests that he appear and testify at an on-the-record interview and that he produce documents, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Karrin J. Feemster, Senior Regional Counsel, Los Angeles, CA, for the Department of Enforcement.

No appearance by or for Kurt H. Johansson.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) charged Kurt H. Johansson (“Johansson”) with failing to respond to multiple requests that he produce documents and appear for an on-the-record interview in connection with FINRA’s investigation of the circumstances surrounding his dismissal by American Family Securities, LLC (“AFS”). According to the Uniform Termination Notice for Securities Industry Registration (Form U5) AFS filed with FINRA on November 22, 2006, AFS had determined that \$8,000 was missing from Johansson’s trust account at its affiliate, American Family Mutual Insurance Company

("American Life"). FINRA sought to determine if Johansson had converted the missing funds, which he should have used to pay customers' insurance premiums. The Complaint charges that Johansson violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA's requests for information.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Johansson was associated with AFS from March 2005 until October 27, 2006, during which time he was registered with FINRA as an Investment Company and Variable Contracts Products Representative. He also was registered as an Investment Company and Variable Contracts Products Principal between April 2005 and May 2006. Johansson's last registration with FINRA terminated on November 22, 2006. He has not been registered or associated with a FINRA member firm since that date.¹

FINRA has jurisdiction of this proceeding pursuant to Article V, Section 4 of FINRA's Bylaws. Enforcement filed the Complaint within two years following the termination of Johansson's registration with FINRA, and the Complaint charges that Johansson failed to respond to FINRA's requests for information issued during the two-year period following his registration termination.²

B. Johansson's Default

Enforcement served Johansson with the First and Second Notices of Complaint by first-class certified mail at his residential address recorded in the Central Registration Depository (the "CRD Address"). Enforcement served the First Notice of Complaint on October 17, 2008, and the Second Notice of Complaint on November 14, 2008.³ Enforcement also sent the First and Second Notices of Complaint to several other addresses that were

¹ Ex. 1. (CRD Record).

² See Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

³ Feemster Decl. ¶¶ 45, 48.

possibly more current than his CRD Address. However, there is no evidence in the record to indicate that any of the alternate addresses was a good address.

Johansson did not file an Answer with the Office of Hearing Officers or otherwise respond to the Complaint. Accordingly, on January 5, 2009, Enforcement filed a Motion of Entry of Default Decision, together with the Declaration of Karrin J. Feemster, counsel for Enforcement, and five exhibits. Johansson did not file a response to the motion.

Johansson defaulted by failing to answer the Complaint.⁴ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.⁵

C. Failure to Respond to Requests for Information

American Life uncovered missing premium payments in or about August 2006 during a routine monthly reconciliation of Johansson's premium trust account. AFS followed up with Johansson, who told his supervisor that the problem was due to his confusion over the billing system and certain health issues.⁶ Johansson was counseled regarding his responsibilities, but when a second monthly reconciliation uncovered further problems, American Life and AFS terminated his employment.⁷

In June 2007, FINRA staff commenced an investigation concerning the premium payments missing from Johansson's premium trust account at American Life. In connection with the investigation, FINRA staff sent Johansson six requests for information between July 26 and May 2, 2008, as well as two requests that he appear for an on-the-record interview dated April 3 and May 2, 2008.

⁴ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003).

⁵ The Complaint is attached as Exhibit A.

⁶ Feemster Decl. ¶ 11.

⁷ *Id.*

FINRA staff sent the first request for information on June 1, 2007, which requested documents relating to the missing insurance premiums. The staff sent the first request to Johansson at his CRD Address. Johansson provided information and documents on June 14, 2007. Johansson denied any wrongdoing, but the documents he provided reflected transfers of funds from his American Life trust account to an unidentified bank account at U.S. Bank. The staff determined that it needed additional information to determine if Johansson had misapplied any of the transferred funds.

On July 26, 2007, FINRA staff sent Johansson a second request for information pursuant to Procedural Rule 8210. As before, the staff sent the request to Johansson's CRD Address. Johansson did not respond to this request. Thereafter, the staff sent Johansson additional requests for the same information, all of which were sent to his CRD Address and several of which were sent to additional addresses the staff believed might be more current. Johansson did not respond to any of the additional four requests.⁸ Johansson also did not respond to the staff's additional two requests that he appear and provide testimony.⁹

Later, the staff received three more possible addresses for Johansson. The staff then sent Johansson an additional five requests between June 11 and September 8, 2008. The staff sent each of these requests to the CRD Address and the new addresses as they were uncovered.¹⁰ The requests sought the same documents as the earlier Rule 8210 requests and directed Johansson to appear for an on-the-record interview. Johansson did not respond to any of the last five requests.

Based on the allegations in the Complaint and the other evidence Enforcement submitted in support of its motion for entry of a default decision, the Hearing Officer finds that Johansson violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond

⁸ Feemster Decl. ¶¶ 16-24.

⁹ *Id.* ¶¶ 25-29.

¹⁰ "Stuart E. Johansson" signed the mailing receipt for the request sent by certified mail on June 11, 2008, to the CRD Address. Feemster Decl. ¶ 31.

in any manner to multiple requests for information FINRA staff issues in connection with FINRA's investigation into the missing premium payments.

III. Sanctions

A. Failure to Respond to Requests for Information

The FINRA Sanction Guidelines ("Sanction Guidelines") recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹¹ Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years.

The Hearing Officer finds that a bar is the appropriate sanction under the facts and circumstances of this case. The fact that he responded to Enforcement's initial request is not sufficiently mitigating to warrant a sanction other than a bar. Although Johansson denied any wrongdoing, the bank documents he provided Enforcement raised serious questions about the truthfulness of his response. The records showed that he had transferred funds from his trust account at American Life to an unidentified bank account rather than to American Life as premium payments. Accordingly, Enforcement sought further information to determine if Johansson had misused or converted the premium payments from his trust account in violation of Conduct Rule 2110. Johansson's refusal to provide further information impeded Enforcement's investigation. The Hearing Officer therefore will bar Johansson from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Kurt H. Johansson is barred from association with any member firm in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110. The bar will become effective

¹¹ FINRA Sanction Guidelines 35 (2007), *available at* <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink).

immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

Copies to:

Kurt H. Johansson (by FedEx, next-day delivery, and first-class mail)
Karrin J. Feemster, Esq. (by electronic and first-class mail)
Mark P. Dauer, Esq. (by electronic mail)
David R. Sonnenberg, Esq. (by electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Kurt Johansson (CRD No. 708249),

Respondent.

DISCIPLINARY PROCEEDING
No. 2006007018301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On October 27, 2006, American Family Securities, LLC (AFS) terminated registered representative Kurt Johansson as a result of its affiliate, American Family Mutual Insurance Company (AMFAM), terminating his association with AMFAM as an insurance agent. According to the Uniform Termination Notice for Securities Industry Termination (Form U5) AFS filed on November 22, 2006, AMFAM terminated Johansson because his insurance premium trust account (Trust Account) was missing in excess of \$8,000 in customer premium payments.
2. FINRA staff commenced an investigation into the allegations in the Form U5 to determine whether Johansson may have converted or misused these insurance premium payments. Johansson failed to respond to the staff's 8210 requests for

information and documents and to appear for his on-the-record interview (OTR), in violation of Conduct Rule 2110 and Procedural Rule 8210.

RESPONDENT AND JURISDICTION

3. From March 2005 to October 27, 2006, Johansson was associated with AFS, a member of FINRA, as an Investment Company/Variable Contracts Representative. During this same period, Johansson was also contracted with AFS's affiliate, AMFAM, as an insurance agent.
4. Johansson has not been associated with a member firm since the termination of his association with AFS. Pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to FINRA's jurisdiction.

CAUSE OF ACTION

**(Failure to Provide Information, Documents and Testimony)
(Violation of NASD Procedural Rule 8210 and Conduct Rule 2110)**

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. In or about June 2007, FINRA initiated an investigation concerning the missing premiums from Johansson's Trust Account. In connection with its investigation, on June 1, 2007, the staff sent Johansson a Rule 8210 request for information and documents relating to the missing customer premium payments.
7. The letter was sent to Johansson's last known residential address, as reflected in the FINRA Central Registration Depository: [REDACTED] (CRD Address).

8. On June 14, 2007, Johansson provided information and documents in response to the staff's June 1st letter. Although Johansson denied any improper use of the funds from the Trust Account, Johansson's documents reflected transfers of funds from Johansson's Trust Account to an unidentified bank account at U.S. Bank. Consequently, the staff determined that it required additional information and documents relating to the transfers from the Trust Account to the U.S. Bank Account.

FIRST REQUEST FOR INFORMATION AND DOCUMENTS

9. On July 26, 2007, the staff sent a Rule 8210 letter to Johansson requesting information and documents. The request sought, among other things, information regarding the unidentified bank account and specific transfers of funds from the Trust Account as well as banking records. The letter was sent by first class mail and certified mail to Johansson's CRD Address and required that he respond on or before August 9, 2007.
10. The Post Office returned the certified letter marked "return to sender unclaimed unable to forward." The first class letter was not returned. There was no response from Johansson by the requested date, or at any time thereafter.

SECOND REQUEST FOR INFORMATION AND DOCUMENTS

11. On August 10, 2007, the staff sent another Rule 8210 letter to Johansson, seeking the same information and documents requested in the July 26, 2007 letter. The request sought, among other things, information regarding the unidentified bank account and specific transfers of funds from the Trust Account as well as banking records. The

letter was sent by first class mail and certified mail to Johansson's CRD Address and required that he respond on or before August 24, 2007.

12. The Post Office returned the certified letter marked "return to sender unclaimed unable to forward." The first class letter was not returned. There was no response from Johansson by the requested date, or at any time thereafter. On August 21, 2007, the staff also called Johansson but the telephone number was no longer in service.

THIRD REQUEST FOR INFORMATION AND DOCUMENTS

13. Thereafter, the staff obtained another possible address for Johansson from the Idaho Department of Insurance which the Idaho authorities had obtained in connection with their investigation of Johansson for fraud and for writing bad checks: [REDACTED]
[REDACTED] (the Pleasant Grove Address).

14. On March 17, 2008, the staff again sent a Rule 8210 letter to Johansson seeking the same information and documents requested in the prior 8210 letters. The letter was sent by first class mail and certified mail to Johansson's CRD Address and to the Pleasant Grove Address, and required that he respond on or before March 31, 2008.
15. The Post Office returned the certified letters sent to Johansson's CRD Address and to the Pleasant Grove Address marked "return to sender unclaimed unable to forward." The first class letters sent to the CRD Address and to the Pleasant Grove Address were not returned. There was no response from Johansson by the requested date, or at any time thereafter.

FOURTH REQUEST FOR INFORMATION AND DOCUMENTS

16. On April 3, 2008, the staff again sent a Rule 8210 letter to Johansson seeking the same information and documents requested in the prior 8210 letters, and requiring that he respond on or before April 17, 2008. The letter was sent by first class mail and certified mail to Johansson's CRD Address and to the Pleasant Grove Address.
17. The Post Office returned the certified letters sent to Johansson's CRD Address and to the Pleasant Grove Address marked "return to sender unclaimed unable to forward." The first class letter sent to the CRD Address was returned by the Post Office marked "return to sender attempted not known unable to forward." The first class letter sent to the Pleasant Grove Address was not returned. There was no response from Johansson by the requested date, or at any time thereafter.

FIFTH REQUEST FOR INFORMATION AND DOCUMENTS

18. On May 2, 2008, the staff again sent a Rule 8210 letter to Johansson seeking the same information and documents requested in the prior 8210 letters and requiring that he respond by May 16, 2008. The letter was sent by first class mail and certified mail to Johansson's CRD Address and the Pleasant Grove Address.
19. The Post Office returned the certified letter sent to Johansson's CRD Address marked "return to sender unclaimed unable to forward." The Post Office also returned the certified letter to the Pleasant Grove Address marked "return to sender vacant." The first class letter sent to the CRD Address was returned by the Post Office and "return to sender wrong address" was handwritten on the envelope. The first class letter sent to the Pleasant Grove Address was returned by the Post Office marked "return to

sender not deliverable as addressed unable to forward." There was no response from Johansson by the requested date, or at any time thereafter.

FIRST REQUEST FOR AN ON-THE-RECORD INTERVIEW

20. During the course of the investigation, the staff determined to request that Johansson appear and give testimony in furtherance of its investigation. The OTR was intended, among other things, to obtain Johansson's explanations about the funds transferred from the Trust Account to the unidentified bank account and his explanations with regard to the missing money.
21. On April 3, 2008, the staff sent Johansson a written request pursuant to Rule 8210 to appear at FINRA's Seattle District Office on May 1, 2008 for his OTR and provide testimony with respect to the staff's investigation. The letter was sent by first class mail and certified mail to Johansson's CRD Address and the Pleasant Grove Address.
22. The Post Office returned the certified letters sent to Johansson's CRD Address and to the Pleasant Grove Address marked "return to sender unclaimed unable to forward." The first class letters sent to the CRD Address and to the Pleasant Grove Address were not returned. Johansson did not appear for his OTR.

SECOND REQUEST FOR OTR

23. On May 2, 2008, the Staff sent Johansson another written request pursuant to Rule 8210 to appear on May 16, 2008 for his OTR and provide testimony with respect to the staff's investigation. The letter was sent by first class mail and certified mail to Johansson's CRD Address and to the Pleasant Grove Address.

24. The Post Office returned the certified letter sent to Johansson's CRD Address marked "return to sender not deliverable as addressed unable to forward." The Post Office also returned the certified letter sent to the Pleasant Grove Address marked "return to sender unclaimed, unable to forward." The first class letter sent to the CRD Address was not returned. The first class letter sent to the Pleasant Grove Address was returned with another address handwritten on the envelope: [REDACTED] (the [REDACTED] Address). Johansson did not appear for his OTR.

FIRST COMBINED REQUEST FOR AN OTR AND REQUEST FOR INFORMATION AND DOCUMENTS

25. In addition to receiving the new [REDACTED] the staff also became aware two other potential addresses: [REDACTED]
[REDACTED]
[REDACTED]

26. On June 11, 2008, the staff sent a Rule 8210 letter to Johansson that sought, among other things, information regarding the unidentified bank account and the transfers of funds from the Trust Account. The letter also requested that Johansson appear on July 2, 2008 for his OTR and provide testimony with respect to the staff's investigation. The letter was sent by first class mail and certified mail to Johansson's CRD Address; the [REDACTED] Address; and the [REDACTED] Address. Johansson's response was due on June 25, 2008.

27. The Post Office returned the certified letter sent to Johansson's CRD Address as well as the certified letter and the first class letter sent to the [REDACTED]

Address each marked "return to sender not deliverable as addressed unable to forward." The staff received a return receipt signed by "Stuart E. Johansson" for the certified letter sent to the [REDACTED] The Post Office returned the certified letter sent to the [REDACTED] Address marked "return to sender no such number unable to forward." The first class letters sent to the CRD Address and to the [REDACTED] were not returned to the staff. The first class letter sent to the [REDACTED] Address was returned to the staff stamped "return to sender attempted not known unable to forward." Johansson did not appear for his OTR, nor did he respond to the 8210 request for information and documents.

SECOND COMBINED REQUEST

28. On July 9, 2008, the staff sent another Rule 8210 letter to Johansson seeking the same information and documents requested in the prior 8210 letters and requiring that he appear for his OTR on July 24, 2008. The letter was sent by first class mail and certified mail to Johansson's CRD Address and to the [REDACTED] Johansson's response was due on July 17, 2008.

29. The Post Office returned the certified letter sent to Johansson's CRD Address marked "return to sender." The letter was also stamped forwarded to [REDACTED] where it had remained unclaimed. The Post Office also returned the certified letter sent to the [REDACTED] Address marked "return to sender attempted not known" and noted in handwriting "MLNA" (moved left no address). The first class letter sent to the CRD Address was returned marked "notify sender of new address: [REDACTED] [REDACTED] It was also marked "forwarding expired return to sender." The first class

letter sent to the [REDACTED] Address was not returned to the staff. Johansson did not appear for his OTR, nor did he respond to the 8210 request for information and documents.

THIRD COMBINED REQUEST

30. On August 8, 2008, the staff sent another Rule 8210 letter to Johansson, seeking the same information and documents requested in the prior letters and requiring that he appear for his OTR on August 22, 2008. The letter was sent by first class mail and certified mail to Johansson's CRD Address; the Pleasant Grove Address; the [REDACTED] Address; the [REDACTED] Address; the [REDACTED] Address; and the [REDACTED] Address. Johansson's response was due on August 19, 2008.

31. The Post Office returned the certified letter sent to Johansson's CRD Address stamped with the [REDACTED] Address and "forwarding time expired return to sender." The Post Office returned the certified letter sent to the Pleasant Grove Address marked "unclaimed." The Post Office returned the certified letter sent to the [REDACTED] Address as well as the certified letter and the first class letter sent to the [REDACTED] Address each marked "return to sender not deliverable as addressed unable to forward." The Post Office returned the certified letter and the first class letter sent to the [REDACTED] Address each marked "no such number." The Post Office returned the certified letter sent to the [REDACTED] Address marked "return to sender unclaimed unable to forward." The first class letter sent to the CRD Address was returned stamped with the [REDACTED] Address and "forwarding time expired return to sender." The first class letter sent to the [REDACTED] Address was returned marked "attempted not known." The first class letters

sent to the Pleasant Grove Address and to the [REDACTED] Address were not returned to the staff. Johansson did not appear for his OTR, nor did he respond to the 8210 request for information and documents.

FOURTH COMBINED REQUEST

32. On August 26, 2008, the staff sent another Rule 8210 letter to Johansson seeking the same information and documents requested in the prior 8210 letters and requiring that he appear for his OTR on September 3, 2008. The letter was sent by first class mail and certified mail to Johansson's CRD Address and to the [REDACTED] Address. Johansson's response was due on September 5, 2008.

33. The Post Office returned the certified letter and first class letter sent to Johansson's CRD Address stamped with the [REDACTED] Address and "forwarding time expired return to sender." The Post Office did not return the certified letter or the first class letter sent to the [REDACTED] Address, nor did the staff receive a signed return receipt for the certified letter. Johansson did not appear for his OTR, nor did he respond to the 8210 request for information and documents.

FIFTH COMBINED REQUEST

34. On September 8, 2008, the staff sent another Rule 8210 letter to Johansson seeking the same information and documents requested in the prior 8210 letters and requiring that he appear for his OTR on September 16, 2008. The letter was sent by first class mail and certified mail to Johansson's CRD Address and to the [REDACTED] Address. Johansson's response was due on September 15, 2008.

35. The Post Office returned the certified letter and the first class letter sent to Johansson's CRD Address stamped with the [REDACTED] Address and "forward time expired return to sender." The Post Office has not returned the certified letter or the first class letter sent to the [REDACTED] Address, nor has the staff received a signed return receipt for the certified letter. Johansson did not appear for his OTR, nor did he respond to the 8210 request for information and documents.
36. As of the date of this complaint, Johansson has not provided the FINRA staff with any of the information requested pursuant to Rule 8210, nor has he appeared for an OTR.
37. By virtue of the foregoing, Johansson violated NASD Procedural Rule 8210 and Conduct Rule 2110.

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; and

- 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: October 17, 2008


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