

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREGORY J. DUFFY
(CRD No. 5145614),

Respondent.

Disciplinary Proceeding
No. 2007007358601

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

June 1, 2009

The Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information, in violation of Conduct Rule 2110 and Procedural Rule 8210.

Appearances

Gary A. Chodosh, Senior Regional Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Gregory J. Duffy.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") filed a Complaint (attached to this Decision as Exhibit A) on January 9, 2009. The Complaint alleges that Respondent Gregory J. Duffy ("Duffy") violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests that he appear for an on-the-record interview to answer questions regarding

FINRA's investigation of his conduct while associated with FINRA member firm New Castle Financial Services LLC ("New Castle").¹

Duffy did not answer or otherwise respond to the Complaint. Consequently, on April 6, 2009, Enforcement filed a Motion for Entry of Default and Imposition of Sanctions ("Motion"). The Motion is supported by the Declaration of Gary A. Chodosh, Esq. ("Chodosh Decl.") and 11 exhibits. Duffy did not respond to the Motion.²

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

The Hearing Officer finds that Enforcement properly served Duffy with the Complaint under Procedural Rule 9134(b)(1). Enforcement served Duffy with copies of the Complaint and the First and Second Notices of Complaint by mailing them to his most current residential address shown in the Central Registration Depository (the "CRD Address") and to a second address obtained from the U.S. Postal Service.³ Enforcement mailed the Complaint and First Notice of Complaint to Duffy by first-class and certified mail, return receipt requested, on January 8, 2009.⁴ The United States Postal Service returned the certified mailing addressed to the CRD Address marked, "not deliverable as addressed,

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this Decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidate rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This Decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

³ Chodosh Decl. ¶¶ 16-17, 25, 30.

⁴ Chodosh Decl. ¶ 25.

unable to forward,” and the certified mailing sent to the second address marked, “Unclaimed-Refused.”⁵

Enforcement mailed the Complaint and Second Notice of Complaint to Duffy’s CRD Address and the second address by first-class and certified mail, return receipt requested, on February 11, 2009.⁶ The United States Postal Service returned both certified mailings marked, “return to sender, unclaimed.”⁷ To date, Duffy has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

Duffy defaulted by failing to answer the Complaint.⁸ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the Complaint admitted and grants Enforcement’s Motion.

B. Jurisdiction

Duffy first became registered as a General Securities Representative through New Castle on June 9, 2006.⁹ On April 12, 2007, New Castle filed a Uniform Termination Notice for Securities Industry Registration (Form U5). The Form U5 disclosed that New Castle permitted Duffy to resign due to his “non-response to requests for information.”¹⁰ FINRA terminated Duffy’s registration effective April 12, 2007.¹¹

Duffy has not been registered with FINRA since April 12, 2007. Nonetheless, he remains subject to FINRA’s jurisdiction for purposes of this proceeding pursuant to Article

⁵ CX-7; CX-8.

⁶ Chodosh Decl. ¶ 30.

⁷ Chodosh Decl. ¶ 31; CX-10; CX-11.

⁸ *Dep’t of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent’s most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁹ CX-1.

¹⁰ CX-2.

¹¹ CX-1.

V, Section 4 of FINRA's By-Laws because (1) the Complaint was filed within two years following the termination of his registration, and (2) the Complaint charges him with failing to respond to FINRA's requests for information made during the two-year period following the termination of his FINRA registration.¹²

C. Failure to Respond to Information Requests

The Complaint alleges that Duffy failed to respond to two written requests that he appear for an on-the-record interview to answer questions regarding his activities at New Castle. The requests were dated March 3 and March 17, 2008.

On March 17, 2008, just before the first scheduled on-the-record interview, Duffy telephoned FINRA staff and told them he would not appear that day. During the call, Duffy and the staff agreed to reschedule the interview to March 24. FINRA staff confirmed that agreement by letter dated March 17 under Procedural Rule 8210. However, Duffy did not appear for the on-the-record interview on March 24.¹³

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish, for purposes of this Decision, that Duffy violated Procedural Rule 8210 and Conduct Rule 2110.

III. Sanctions

The FINRA Sanction Guidelines ("Guidelines") recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹⁴ Here, there is no evidence of any mitigating factors that would justify a lesser

¹² Article V, Sec. 4, FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

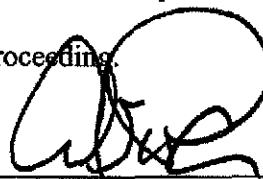
¹³ Chodosh Decl. ¶¶ 18-24.

¹⁴ FINRA Sanction Guidelines 35 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink).

sanction. Duffy had actual notice of the on-the-record interview, which FINRA staff rescheduled to a second date at his request. Duffy then willfully refused to appear to answer the staff's questions. Accordingly, the Hearing Officer will bar Duffy from associating with any FINRA member firm in any capacity.

IV. Order

Duffy is barred from association with any FINRA member firm in any capacity for his failure to respond to appear for his on-the-record interview, in violation of Conduct Rule 2110 and Procedural Rule 8210. The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

Copies to:

Gregory J. Duffy (by FedEx, next-day delivery, and first-class mail)
Gary A. Chodosh, Esq. (by first-class and electronic mail)
David Sonnenberg, Esq. (by electronic mail)
Mark P. Dauer, Esq. (by electronic mail)

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OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREGORY J. DUFFY
(CRD No. 5145614),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007007358601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Gregory Duffy ("Duffy") failed to appear for an on-the-record ("OTR") interview, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT AND JURISDICTION

2. Duffy first became registered with FINRA as a General Securities Representative ("GSR") on or about June 9, 2006 through member firm New Castle Financial Services LLC (BD No. 102380) ("New Castle").
3. From on or about May 12, 2006 through April 12, 2007, Duffy was employed with New Castle. On April 12, 2007, New Castle filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Duffy.

4. Duffy is not currently associated with a FINRA member firm. However, FINRA retains jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

**CAUSE OF ACTION
FAILURE TO TESTIFY
NASD PROCEDURAL RULE 8210 AND NASD CONDUCT RULE 2110**

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.

The First Request

6. In connection with FINRA's examination concerning Duffy's conduct while associated with New Castle, on March 3, 2008, FINRA staff (the "Staff") sent a letter to Duffy requesting that he appear and testify on March 17, 2008 at an OTR at FINRA's Long Island District Office (the "First Request").
7. The letter also asked that Duffy contact the Staff by March 10, 2008 to either confirm his appearance or to reschedule if he was unable to appear on the scheduled date.
8. The First Request was made pursuant to NASD Procedural Rule 8210 and warned of possible disciplinary action if Duffy failed to appear.
9. The Staff sent the First Request by certified mail, return receipt requested and by regular first-class mail to Duffy's residential address as listed on the Central Registration Depository [REDACTED] ("CRD Address").

10. The return receipt card for the certified mailing to the CRD Address was returned to the Staff by the United States Postal Service ("USPS"), signed by "Gregory Duffy" with a delivery date listed as "3/10/08." On the return receipt card, it was noted that the delivery address was different from the address on the certified mailing: "■ Shoreham Drive" (not "■ Ingleside Road").
11. The first class mailing was not returned by the USPS.
12. On March 17, 2008, approximately one-half hour before the scheduled OTR, Duffy telephoned the Staff and advised that he would not appear on that date.

The Second Request

13. During that same telephone call on March 17, 2008, following Duffy's refusal to appear on that date, the Staff requested that Duffy appear and give testimony on March 24, 2008 at an OTR at FINRA's Long Island District Office (the "Second Request"). Duffy agreed.
14. On March 17, 2008, the Staff sent Duffy a letter confirming its request for his appearance to give testimony on the rescheduled date, March 24, 2008, and Duffy's agreement concerning the new OTR date.
15. The Second Request was made pursuant to NASD Procedural Rule 8210. The Staff warned of possible disciplinary action if Duffy failed to appear.
16. The Staff sent the Second Request letter to Duffy at [REDACTED]
[REDACTED] (the "Second Address") by (i) certified mail, return

receipt requested, (ii) regular first-class mail, and (iii) Federal Express overnight delivery.

17. The return receipt card for the certified mailing to the Second Address was returned to the Staff by the USPS, signed by "Gregory Duffy" with a delivery date listed as "3/19/08."

18. The first class mailing to the Second Address was not returned by the USPS.

19. The Federal Express package was delivered to the Second Address on March 18, 2008.

20. On March 24, 2008, Duffy failed to appear for the OTR.

21. The Staff telephoned Duffy and left a message. Duffy failed to return the Staff's call.

By reason of the foregoing, Duffy violated NASD Procedural Rule 8210 and Conduct Rule 2110.

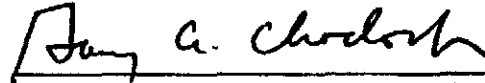
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

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

January 8, 2009

FINRA DEPARTMENT OF ENFORCEMENT

A handwritten signature in black ink, reading "Gary A. Chodosh". The signature is written in a cursive style with a horizontal line underneath it.

Gary A. Chodosh, Senior Regional Counsel
David Jaffe, Regional Chief Counsel
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