

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM HULL KOST, JR.
(CRD No. 1940023),

Respondent.

Disciplinary Proceeding
No. 20070093565

DEFAULT DECISION

Hearing Officer – SW

Date: July 1, 2008

Respondent was barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to a request for information issued by the FINRA staff.

Appearances

Janice A. Payne, Esq., Senior Counsel, New York, NY, for the Department of
Enforcement.

No appearance by or for Respondent William H. Kost, Jr.

DECISION

I. Procedural History

On November 7, 2007, the Department of Enforcement (“Enforcement”) filed a one-count Complaint, alleging that Respondent William H. Kost, Jr. (“Respondent”) failed to respond to a request for information issued by the FINRA staff pursuant to Rule 8210, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

On February 6, 2008, Enforcement filed a Motion for Entry of Default Decision (“Motion”), supported by the Declaration of Janice A. Payne, Esq., Senior Counsel in FINRA’s New York, NY office, and by 14 exhibits. On May 23, 2008, Enforcement filed a Supplemental

Motion, including a supplemental declaration and an additional six exhibits.¹ For the reasons set forth below, Enforcement's Motion, as supplemented, is granted.

II. Respondent's Default

On November 6, 2007, Enforcement served Respondent with copies of the Complaint and Notice of Complaint, via FedEx, at his current residential address as reflected in FINRA's Central Registration Depository ("CRD address"), and at an alternative address.² (DECL at ¶ 8; CX-1, p. 7; CX-4; CX-7). The copies sent to the alternate address by FedEx were delivered, but those sent to the CRD address were returned to Enforcement. (DECL at ¶ 8; CX-6; CX-8). Respondent did not file an Answer. (DECL at ¶ 9). On December 7, 2007, Enforcement served Respondent with copies of the Complaint and Second Notice of Complaint, via FedEx, at his CRD address and the alternate address. (DECL at ¶ 9; CX-9; CX-11). The copies sent to the CRD address and the alternate address were not returned to Enforcement. (DECL at ¶ 10; CX-10; CX-12). Respondent did not file an answer or any other response to the Complaint. (DECL at ¶ 11).

To complete service of the mailing to the CRD address, on March 14, 2008, Enforcement re-served the Complaint and Notice of Complaint on Respondent at his CRD address via first class and certified mail.³ (SUPP DECL at ¶ 4; CX-15). On April 14, 2008, Enforcement re-served the Complaint and Second Notice of Complaint, via first class and certified mail, on

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the Payne Declaration will be designated as "DECL at ¶;" the statements in the Supplemental Payne Declaration will be designated as "SUPP DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² The alternate address was initially provided by Respondent's former attorney in a letter dated November 17, 2006. (DECL at ¶ 12; CX-13). Enforcement also obtained Respondent's alternate address through a search of a LEXIS database. (DECL at ¶ 12; CX-14).

³ Pursuant to Rule 9134(b)(3), service by mail is complete upon mailing, whereas service by courier service is complete upon delivery.

Respondent at his CRD address. (SUPP DECL at ¶ 5; CX-18). Respondent has not filed an answer or any other response to the Complaint. (SUPP DECL at ¶ 6).

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the Complaint to Respondent's CRD address and the alternative address.⁴

Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.⁵

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered with Wachovia Securities, LLC ("Wachovia"), a FINRA member firm, as a general securities representative from October 1, 2000 to November 10, 2006. (CX-2, p. 1; CX-3, p. 4). On October 11, 2006, Wachovia terminated Respondent for "non-compliance with firm policy regarding reporting of customer complaint(s)." (CX-2, pp. 1-2; CX-3, p. 3). Respondent is not currently associated with any FINRA member firm. (CX-3, p. 3; DECL at ¶ 6).

Nevertheless, Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws, because (1) the Complaint was filed within two years after his association with Wachovia was terminated, and (2) the Complaint charges him with a failure to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction.

⁴ See *Department of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when the complaint was mailed to respondent's CRD address).

⁵ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rules 9215(f) and 9269, and *Notice to Members* 99-77 (Sept. 1999).

B. Respondent Failed to Respond to a FINRA Request for Information

The Complaint alleges that Respondent failed to respond to a request for information that was sent by the FINRA staff to Respondent at his CRD address and to an alternate address on September 14, 2007, via first class and certified mail, pursuant to NASD Procedural Rule 8210.⁶ (Complaint at ¶ 12; DECL at ¶ 20).

The Hearing Officer finds that Respondent is deemed to have received the request for information sent to his CRD address and the alternative address pursuant to Rule 8210(d). Failure to comply with Rule 8210 requests for information is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.⁷

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 as alleged in the Complaint.

IV. Sanctions

For failing to respond to a request for information issued by the FINRA staff pursuant to NASD Procedural Rule 8210, Enforcement recommended that Respondent be barred. The FINRA Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.⁸ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction.

⁶ Prior to receiving a request for information from the FINRA staff, Respondent received and responded to two preliminary requests for information from the staff of the New York Stock Exchange, LLC. (Complaint at ¶¶ 4, 6). In addition, Respondent received and failed to respond to a formal request for information issued on July 12, 2007, pursuant to Rules 476 and 477 of the New York Stock Exchange, LLC. (Complaint at ¶¶ 8, 10).

⁷ See, e.g., *Richard J. Rouse*, Exchange Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *Joseph G. Chiulli*, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

⁸ *FINRA Sanction Guidelines*, p. 35 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent for failing to respond to a request for information.

V. Order

Respondent William Hull Kost, Jr. is barred from associating with any FINRA member firm in any capacity for violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 for failing to respond to a request for information issued by the FINRA staff pursuant to Rule 8210. The bar will become effective immediately upon this Default Decision becoming the final disciplinary action of FINRA.

Sharon Witherspoon
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
July 1, 2008

Copies to:
William Hull Kost, Jr. (via FedEx and first class mail)
Janice A. Payne, Esq. (via electronic and first class mail)
David R. Sonnenberg, Esq. (via electronic and first class mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**WILLIAM HULL KOST, JR.
(CRD No. 1940023),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20070093565**

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

1. As part of an ongoing investigation, Enforcement issued a request pursuant to NASD Rule 8210, requiring respondent William H. Kost ("Kost") to provide a written statement regarding allegations that, while employed at Wachovia Securities, LLC (the "Firm"), Kost made misrepresentations to Firm customers regarding Unit Investment Trusts ("UITs") purchased by the customers and failed to report to the Firm certain customer complaints. Kost has not provided the requested information.

2. By virtue of this conduct, Kost has violated, and continues to violate, NASD Rules 8210 and 2110.

RESPONDENT

3. Kost has been registered with FINRA (f/k/a NASD or National Association of Securities Dealers) since May 1, 1989. Kost was a registered representative at the Firm from

October 1, 2000 to October 11, 2006, when he was terminated for non-compliance with Firm policy regarding the reporting of customer complaints. Kost is no longer associated with a member firm. However, pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to FINRA's jurisdiction.

BACKGROUND

Prior Regulatory Communications with Kost

4. On October 18, 2006, the Preliminary Investigations Unit of Enforcement ("PI Unit"), issued a request to Kost for a written statement concerning two customer complaints, which alleged that Kost had made misrepresentations about UITs purchased by the customers. Kost provided the requested information on November 3, 2006.

5. On October 11, 2006, Kost was discharged from the Firm for non-compliance with Firm policy regarding the reporting of customer complaints.

6. On May 10, 2007, the PI Unit issued a request to Kost for a written statement concerning the circumstances surrounding Kost's discharge by the Firm. On June 8, 2007, Kost provided the requested information.

7. On July 10, 2007, Enforcement opened a formal investigation into eleven customer complaints alleging that Kost had made misrepresentations about UITs purchased by the customers and Kost's alleged failure to properly report customer complaints.

8. As part of its formal investigation, on July 12, 2007, Enforcement issued a request pursuant to Rules 476 and 477 of the New York Stock Exchange, LLC, requiring Kost to provide a written statement regarding the nine customer complaints that had not been addressed in the written statements previously provided by him. The request was sent via certified mail, return

receipt requested, and first-class mail to the address that was recorded on Kost's CRD report and was copied to his lawyer. Kost was required to produce the written statement no later than August 1, 2007.

9. At Kost's request, on or around July 30, 2007, Enforcement extended his time to provide the written statement to August 8, 2007.

10. By letter dated August 6, 2007, Kost's lawyer informed Enforcement staff that Kost would not be providing the written statement requested in the July 12, 2007 letter.

CAUSE OF ACTION

Failure to Provide Written Statement in Response to a Request by Enforcement

11. Enforcement realleges and incorporates by reference paragraphs 1-10 above.

12. On September 14, 2007, Enforcement sent a letter to Kost pursuant to NASD Rule 8210, requesting that he provide, no later than October 5, 2007, a written statement regarding the nine customer complaints that had not been addressed in the written statements previously provided by him. The letter was sent via certified mail, return receipt requested, and first-class mail both to the address that was recorded on Kost's CRD report and to the last known address for him. The letter was not copied to counsel because Enforcement was advised that Kost was no longer represented at the time the letter was sent. Both copies of the letter sent to the address that was recorded on Kost's CRD report were returned to Enforcement as undeliverable. The copy of the letter sent to Kost's last known address via certified mail, return receipt requested, was returned to Enforcement as unclaimed. The copy of the letter sent to his last known address via first-class mail was not returned to Enforcement. Kost has not provided the requested information.

13. By virtue of the foregoing, Kost has violated, and is continuing to violate, NASD Rules 8210 and 2110.

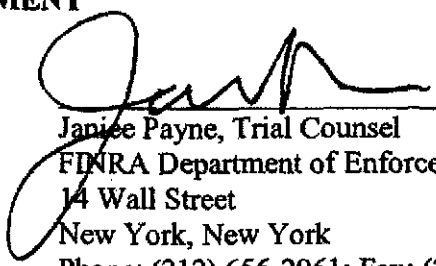
RELIEF REQUESTED

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.
- 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: November 6, 2007



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