

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHERYL ANN HOWARD HIXSON
(CRD No. 2474360),

Respondent.

Disciplinary Proceeding
No. 20070093638

DEFAULT DECISION

Hearing Officer-SNB

September 4, 2008

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

Appearances

Elena Salzman Kindler, Esq., and Danielle I. Schanz, Esq., for the Department of
Enforcement.

No appearance by Respondent.

DECISION

I. Background

On January 7, 2008, the Department of Enforcement ("Enforcement") filed a Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Cheryl Ann Howard Hixson ("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. Accordingly, on April 3, 2008, Enforcement filed a motion for entry of default decision, supported by the Declaration of Elena Salzman Kindler, Esq., and 25 exhibits. On May 30, 2008, Enforcement filed a further submission regarding jurisdiction. Respondent did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On December 31, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail to her last known residential address. On January 7, 2008, Enforcement received the certified mail return receipt with Respondent's signature acknowledging receipt of the Complaint and Notice of Complaint. Respondent did not file an Answer. In the same manner, on January 30, 2008, Enforcement served the Complaint and Second Notice of Complaint on Respondent. On February 6, 2008, Enforcement received the certified mail return receipt with Respondent's signature acknowledging receipt of the Complaint and Second Notice of Complaint. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by giving Respondent actual notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent was a non-licensed branch office administrator at Edward D. Jones & Co. ("Edward Jones") from March 29, 1994 through December 12, 2006. Article 1 of the FINRA By-laws defines an associated person to include those who, through a member, are "engaged in the investment banking or securities business." Respondent supported a registered representative in servicing customers of Edward Jones. Respondent's responsibilities included speaking with customers, opening and closing customer accounts, processing trades, and maintaining

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

compliance files. Accordingly, the Hearing Officer finds that Respondent was an associated person within the applicable provisions of the FINRA By-Laws.²

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 (1) the Complaint charges Respondent with failing to comply with requests for information within two years of the date when Respondent ceased to be associated with a member, and (2) the Complaint was filed within that two-year period.

IV. Violation - Failure to Respond

The Complaint alleges that on October 23, 2007, FINRA Staff ("Staff") sent Respondent a request, pursuant to Rule 8210, for information concerning suspected check kiting (i.e., depositing checks into her Edward Jones account from her personal outside checking account when she knew or should have known there were insufficient funds to cover the checks). Enforcement received a certified mail return receipt bearing Respondent's signature acknowledging receipt, and indicating that the request was delivered to Respondent on October 30, 2007. 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

² The Hearing Officer erroneously referred to Rule 1011's definition of an associated person in her request for further information on jurisdiction. The applicable provision for jurisdiction over proceedings involving violations of Rule 8210 is Article I of the By-Laws.

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. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

request,⁴ she failed to respond. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines ("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

Respondent is barred from association with any member firm in any capacity for failing to respond to requests for information, in violation of Rules 8210 and 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: Cheryl Ann Howard Hixson (*via overnight and first-class mail*)
Elena Salzman Kindler, Esq. (*via electronic and first-class mail*)
Danielle I. Schanz, Esq. (*via electronic and first-class mail*)
Suzanne Elovic, Esq. (*via electronic mail*)
Susan Light, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁴ See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

**CHERYL ANN HOWARD HIXSON,
(CRD No. 2474360),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
NO. 20070093638**

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

1. As part of an ongoing investigation, Enforcement issued a request pursuant to NASD Rule 8210, requiring that respondent Cheryl Ann Howard Hixson ("Hixson") provide a written statement regarding allegations that, while employed at Edward D. Jones & Co. (the "Firm"), Hixson engaged in check kiting (i.e., depositing checks into her Firm account from her personal outside checking account(s) when she knew or should have known, there were insufficient funds in such account(s) to cover the checks deposited). Hixson has not provided the requested information.

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

RESPONDENT

3. Hixson has had a profile with FINRA (f/k/a NASD) since 1994. Hixson was a non-licensed Branch Office Administrator at the Firm from March 29, 1994 to December 12, 2006, when she was terminated for depositing checks into her Firm account from her personal outside bank checking account when she knew or should have known there were insufficient funds in the checking account to cover the checks she deposited. Upon information and belief, Hixson is no

longer associated with a member firm. However, pursuant to Article V, Section 4 of FINRA's By-Laws, she remains subject to FINRA's jurisdiction.

BACKGROUND

Prior Regulatory Communications with Hixson

4. The Preliminary Investigations Unit (the "PI Unit") of NYSE Regulation, Inc. ("NYSE Regulation") issued two requests to Hixson for written statements concerning such alleged conduct. On April 10, 2007, the PI Unit issued its first request to Hixson for a written statement concerning the matter, which was due by May 10, 2007. The letter, which was sent via certified mail, return receipt requested, and first-class mail, was delivered to Hixson on or about April 16, 2007. The return receipt was returned to the PI Unit with Hixson's signature acknowledging receipt. The copy sent by first class mail was not returned to the PI Unit.

5. Hixson contacted the PI Unit on May 8, 2007 requesting an extension of time to respond, and she was given until May 22, 2007 to submit her written statement.

6. On May 23, 2007, Hixson again contacted the PI Unit and left a voicemail claiming family hardship (including that her phone had been disconnected), and she requested an additional extension. When the requested written statement was not received by June 4, 2007, the PI Unit attempted to contact Hixson via telephone, but it was disconnected.

7. Thereafter, the PI Unit renewed its request for a written statement from Hixson in a letter dated June 4, 2007. The letter was sent via certified mail, return receipt requested, and first-class mail, and it was delivered to Hixson on or about June 8, 2007. The return receipt was returned to the PI Unit with Hixson's signature acknowledging receipt. The copy sent by first class mail was not returned to the PI Unit. The PI Unit again attempted to contact Hixson by telephone on June 15, 2007, but the telephone line was still disconnected.

8. On July 17, 2007, as part of its formal investigation, the Division of Enforcement of NYSE Regulation issued a written request to Hixson pursuant to NYSE Rules 476 and 477 requesting that Hixson provide a written statement regarding her possible check kiting. The

request was sent via certified mail, return receipt requested, and first-class mail, and the return receipt was returned to Enforcement with the signature of her husband, Quinn Hixson, acknowledging receipt. Hixson's written statement was due by August 6, 2007. Enforcement received no response from Hixson.

CAUSE OF ACTION

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

9. Enforcement re-alleges and incorporates by reference paragraphs 1-8 above.

10. In a letter dated October 23, 2007, Enforcement sent Hixson a request for a written statement concerning allegations that she may have engaged in check kiting and for documents related thereto pursuant to NYSE Rule 476 and 477 and NASD Rule 8210.

Enforcement notified Hixson that she was required to comply with the request by November 5, 2007. The letter was sent via certified mail, return receipt requested, and first-class mail, and it was delivered to Hixson on or about October 30, 2007. The return receipt was returned to Enforcement with Hixson's signature acknowledging receipt. Hixson has not provided the requested information.

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

RELIEF REQUESTED

WHEREFORE, Enforcement 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: 12/31/07

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