

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KALPESH B. PATEL  
(CRD No. 5188162),

Respondent.

Disciplinary Proceeding  
No. 2007011295301

Hearing Officer – MC

**DEFAULT DECISION**

April 3, 2009

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

*Appearances:*

Richard S. Schultz, Senior Regional Counsel, Chicago, IL, for the Department of Enforcement.

No appearance by or for Respondent Kalpesh B. Patel.

**DECISION**

**I. Introduction**

On December 2, 2008, the Department of Enforcement (“Enforcement”) filed the attached Complaint in this disciplinary proceeding. It alleges that Respondent Kalpesh B. Patel (“Respondent”) failed on two occasions to respond to requests for information issued to him by FINRA staff (“Staff”) in violation of Conduct Rule 2110 and Procedural Rule 8210.

On December 2, 2008, Enforcement served Respondent with the Complaint and Notice of Complaint at his most current residential address recorded in FINRA’s Central

Registration Depository (the "CRD address"). Nonetheless, Respondent did not file an answer. Subsequently, on January 6, 2009, Enforcement served Respondent with the Complaint and a Second Notice of Complaint at his CRD address; again, Respondent failed to answer.

Consequently, on February 27, 2009, Enforcement filed a Motion for Entry of Default Decision ("Motion") against Respondent supported by the Declaration of Richard S. Schultz, Senior Regional Counsel in FINRA's Chicago, IL, office, and six exhibits. Respondent failed to file a response to the Motion.

For the reasons set forth below, the Motion is granted.

## **II. Findings of Fact and Conclusions of Law**

### **A. Jurisdiction**

From September 18, 2006, to November 20, 2007, Respondent was registered as an Investment Company and Variable Contracts Products Representative with Chase Investment Services Corp. ("Firm"), a FINRA member firm.<sup>1</sup> Respondent is not currently associated with any FINRA member firm.

The Firm's affiliate bank terminated Respondent's registration on November 20, 2007, for "Depositing checks from one bank to another without funds available." On December 3, 2007, and again on December 27, 2007, the Staff sent Respondent requests pursuant to Rule 8210 to provide a written statement responding to the Firm's allegation that he had deposited checks with insufficient funds. Respondent failed to respond to these requests. Consequently, Enforcement filed the Complaint. Because the Complaint was filed less than two years after the termination of Respondent's last registration,

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<sup>1</sup> Enforcement Exhibit CX-1.

FINRA has jurisdiction to bring this disciplinary proceeding pursuant to Art. V, § 4 of FINRA's By-Laws.

**B. Respondent's Default**

On December 2, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail at his CRD address. The first-class mailing was not returned. The return receipt for the certified mailing was returned and appears to bear the signature "BS Patel."<sup>2</sup>

On January 6, 2009, Enforcement served the Complaint and a Second Notice of Complaint on Respondent at his CRD address by first-class and certified mail. The first-class mailing was not returned. The certified return receipt was returned bearing an illegible signature.<sup>3</sup>

Enforcement complied with the requirements of Rule 9134 by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing Respondent with constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted.<sup>4</sup> Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

**C. Violations of Conduct Rule 2110 and Procedural Rule 8210**

The single Cause of the Complaint alleges that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 when he failed to respond to two identical requests for information made by the Staff under the authority of Rule 8210. Both requests required

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<sup>2</sup> Enforcement Exhibit CX-3.

<sup>3</sup> Enforcement Exhibit CX-5.

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

Respondent to provide information, in a written statement, responding to his Firm's report that he had deposited checks from one bank account into another bank account with insufficient funds.

The first request was sent by the Staff to Respondent's CRD address on December 3, 2007, by first-class and certified mail. The first-class mailing was not returned, but the certified receipt was returned with the signature "Kash" and showing a delivery date of December 7, 2007.

Receiving no response to the initial request for information, on December 27, 2007, the Staff sent Respondent a second request for a written statement, again to Respondent's CRD address by first-class and certified mail. The first-class mailing was not returned. The certified receipt was returned, this time bearing an illegible signature and showing a delivery date of December 28, 2007.

Before filing the Complaint, Enforcement sent settlement documents to Respondent at his CRD address. Respondent contacted the Staff and acknowledged that he had received the two requests for information. He claimed he had responded to the requests. When he was informed that the Staff had not received any response, Respondent stated he would send another copy of the statement. Later, when the Staff again informed Respondent it had not received the statement, Respondent said he would bring a copy to the Staff. The Staff did not receive any response from Respondent.<sup>5</sup>

Respondent's failures to respond to the Staff's requests for information violated Conduct Rule 2110 and Procedural Rule 8210.

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<sup>5</sup> Schultz Decl. ¶ 13.

#### **D. Sanctions**

FINRA's Sanction Guidelines recommend a bar for failure to respond in any manner to a request for information issued pursuant to Rule 8210.<sup>6</sup>

The record reflects that Respondent received two written requests at his CRD address and did not respond. Respondent informed Enforcement that he had received the two Rule 8210 requests and claimed that he had submitted a written response. None was received by Enforcement, however. Subsequently, Respondent claimed that he would take a copy of his response to Enforcement. He failed to do so. These are aggravating factors. The record is devoid of any mitigating circumstances that might justify the imposition of a sanction less than a bar. As has often been observed, "Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA's] examinations and investigations... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information."<sup>7</sup> Concerning sanctions for violating Rule 8210, "[t]he Guidelines treat a failure to respond and a failure to respond truthfully as egregious violations."<sup>8</sup>

A bar, therefore, is the appropriate sanction for Respondent's failures to respond in any manner to the two requests for information in this case.

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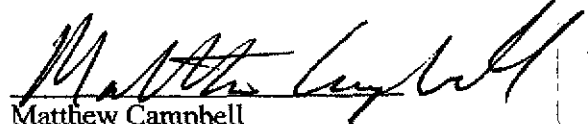
<sup>6</sup> *FINRA Sanction Guidelines*, 35 (2007); available at <http://www.finra.org/Industry/Enforcement/index.htm> (then follow "Sanction Guidelines" hyperlink).

<sup>7</sup> *DOE v. Gregory R. Masceri*, 2006 NASD Discip. LEXIS 29, \*35 - \*36 (Dec. 18, 2006).

<sup>8</sup> *Id.* \*41.

**E. Order**

Respondent Kalpesh B. Patel is barred from association with any FINRA member firm in any capacity for failing to respond to two requests for information issued by FINRA staff, 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.

  
Matthew Campbell  
Hearing Officer

**Copies to:**

Kalpesh B. Patel (*via FedEx and first-class mail*)  
Richard S. Schultz, Esq. (*via electronic and first-class mail*)  
Mark P. Dauer, Esq. (*via electronic mail*)  
David R. Sonnenberg, Esq. (*via electronic mail*)

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

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

KALPESH B. PATEL  
Limited Registered Representative  
(CRD No. 5188162)

Respondent

**Disciplinary Proceeding  
No. 2007011295301**

Hearing Officer

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. On or about December 3, 2007 and December 27, 2007, FINRA Staff (Staff) sent letters to Kalpesh B. Patel (Patel) requesting information and documentation about allegations that he deposited checks from one bank account to another bank account without having sufficient funds to pay for the checks, but Patel failed to respond to the requests for information, in violation of NASD Rules 2110 and 8210.

**RESPONDENT**

2. From on or about September 18, 2006 to on or about November 20, 2007, Patel was registered as an Investment Company and Variable Contracts Products Representative with Chase Investment Services Corp. (Member), a member of FINRA. Patel is not currently

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associated with any member of FINRA. Since this Complaint is filed within two years of the termination of Patel's registration with the Member, Patel is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws.

**CAUSE FOR COMPLAINT  
NASD Rules 2110 and 8210 - Failure to Respond to the Staff's  
Requests for Information by Patel.**

3. Paragraph numbers 1 through 2, above, are re-alleged and incorporated herein by reference.
4. When Patel's securities registration was terminated by the Member, it reported that Patel had deposited checks from one bank account into another bank account, and withdrew funds without having sufficient funds to pay for the checks.
5. On or about December 3, 2007, Staff sent Patel a request that he provide a written statement responding to the allegations of the Member as noted in paragraph 4 above, pursuant to and in accordance with the provisions of NASD Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Patel's address of record as contained in the records of the Central Registration Depository (CRD Address). The first class mailing was not returned to the Staff, and the certified return receipt was returned with the signature "Kash," showing a delivery date of December 7, 2007.
6. Having not received a response to the initial request for information and documentation, on or about December 27, 2007, the Staff sent Patel a letter marked "second request," asking that he provide a written statement responding to the allegations of the Member as noted in paragraph 4 above, pursuant to and in accordance with the provisions of NASD Rule 8210. The Request for information was sent by first class mail, and by certified mail, return receipt requested, to Patel's CRD Address. The first class mailing was not returned to the Staff,

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and the certified return receipt was returned with an undecipherable signature, showing a delivery date of December 28, 2007.

7. Patel failed to respond to each and all of the requests for documents and information described in paragraphs 5 and 6, above, and the time for Patel to respond has passed.

8. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and Rule 8210 by Patel.

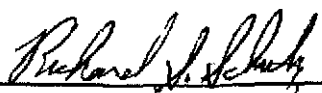
**PRAYER FOR RELIEF**

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed;  
and,
- B. order that 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**

December 2, 2008  
Date

  
Richard S. Schultz, Esq. Senior Regional Counsel  
Mark A. Koerner, Esq. Associate Vice-President  
and Regional Chief Counsel  
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