

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TONY O'NEAL KERTCHAVAL
(CRD No. 4940460),

Respondent.

Disciplinary Proceeding
No. 20080126223

Hearing Officer – MAD

DEFAULT DECISION

November 20, 2009

Respondent is barred from associating with any FINRA member firm in any capacity for failing to appear for on-the-record interviews as requested by FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Jessica A. Dennehy, Counsel, New York, NY, for the Department of Enforcement.

No appearance by or on behalf of Tony O'Neal Kertchaval.

DECISION

I. Introduction

On June 24, 2009, the Department of Enforcement ("Enforcement") filed the attached Complaint in this disciplinary proceeding against Respondent Tony O'Neal Kertchaval ("Kertchaval"). The Complaint charges that Kertchaval failed to appear and provide on-the-record testimony as requested by FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110. The Complaint incorrectly referred to former NASD Rule 2110 instead of FINRA Rule 2010, which is identical in substance to NASD Rule

2010.¹ FINRA sought Kertchaval's on-the-record testimony in connection with an ongoing investigation.

Kertchaval did not answer or otherwise respond to the Complaint. Consequently, on October 8, 2009, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), supported by the Declaration of Jessica A. Dennehy, Esq. ("Dennehy Decl.") and 17 exhibits. Respondent did not file a response to the Default Motion.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

In January 2005, Kertchaval became employed with Farmers Insurance Group of Companies ("FIG") as an insurance agent. On March 31, 2005, Farmers Financial Solutions, LLC ("FFS"), a FINRA member and a broker-dealer affiliate of FIG, filed a Uniform Application for Securities Industry Registration or Transfer ("Form U4") on Kertchaval's behalf to register him as an Investment Company and Variable Contracts Products Representative. On March 3, 2008, FFS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on Kertchaval's behalf with FINRA.³ The Form U5 reported that FIG had discharged Kertchaval for mishandling of property and casualty insurance premiums.⁴

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 consolidated 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 Conduct Rules that were in effect at the time of Respondent's 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 Dennehy Decl. ¶ 5; CX-2.

⁴ CX-2.

Kertchaval is not currently associated with a FINRA member in any capacity. Nonetheless, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following the termination of his last registration with a FINRA member, and (2) the Complaint charges him with failing to respond to FINRA requests for on-the-record testimony made during the two-year period following the termination of his registration.⁵

B. Respondent's Default

Enforcement served Kertchaval with the Notice of Complaint and Complaint on June 24, 2009, by first-class and certified mail, return receipt requested, at his residential address recorded in the Central Registration Depository (the "CRD Address").⁶ The U.S. Postal Service ("USPS") returned the certified mailing to Enforcement marked, "Unclaimed"; the first-class mailing was not returned.⁷ The Notice of Complaint stated that Kertchaval was required to answer the Complaint by July 22, 2009.⁸ Kertchaval failed to file an Answer to the Complaint.

On July 27, 2009, Enforcement served a Second Notice of Complaint and Complaint on Kertchaval in the same manner as it had the Notice of Complaint.⁹ Pursuant to the Second Notice of Complaint, Kertchaval was required to answer the Complaint by

⁵ Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁶ Dennehy Decl. ¶ 23; CX-11, 12.

⁷ Dennehy Decl. ¶¶ 25-26; CX-12.

⁸ Dennehy Decl. ¶ 27.

⁹ Dennehy Decl. ¶ 29; CX-13.

August 13, 2009.¹⁰ The first-class mailing was not returned. When Enforcement did not receive either a certified mailing or a receipt from the USPS, it contacted the USPS and learned that the certified mailing had been inadvertently misplaced.¹¹ Upon locating the certified mailing, the USPS attempted delivery to Kertchaval's CRD Address on September 11 and September 14, 2009.¹² On September 14, 2009, the U.S. Postal Service left a notice at Kertchaval's CRD Address, stating that he had 30 days to claim the package or it would be returned to Enforcement.¹³

On September 18, 2009, Enforcement received the certified mailing receipt corresponding to the Second Notice of Complaint sent on July 27, 2009.¹⁴ The certified mailing receipt was dated September 15, 2009, signed by "Nancy Bello."¹⁵ To date, Kertchaval has not filed an answer or otherwise responded to the Complaint.

The Hearing Officer finds that Enforcement properly served Kertchaval with the Complaint by mailing the Complaint and the First and Second Notices of Complaint in accordance with Procedural Rule 9134(b)(1), thereby giving him constructive notice of this disciplinary proceeding.¹⁶ Kertchaval defaulted by failing to answer the Complaint. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer

¹⁰ Dennehy Decl. ¶ 31.

¹¹ *Id.* ¶ 33.

¹² *Id.*

¹³ Dennehy Decl. ¶ 33; CX-14.

¹⁴ Dennehy Decl. ¶ 36.

¹⁵ *Id.*; CX-17.

¹⁶ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 (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." (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998))).

deems the allegations in the attached Complaint admitted and grants Enforcement's Default Motion.

C. Failure to Appear for On-the-Record Interviews

The Complaint alleges that Kertchaval failed to appear at two scheduled on-the-record interviews, in violation of Procedural Rule 8210 and Conduct Rule 2110. Enforcement sent the first request, dated December 16, 2008, to Kertchaval at his CRD Address by first-class and certified mail pursuant to Procedural Rule 8210, requesting that he appear and provide sworn testimony on January 15, 2009.¹⁷ The USPS returned the certified receipt to Enforcement signed by "Tony Kertchaval," dated December 22, 2008.¹⁸ Nonetheless, Kertchaval did not appear to provide the requested sworn testimony on January 15, 2009.¹⁹

Enforcement sent the second request, dated January 16, 2009, to Kertchaval at his CRD Address by first-class and certified mail pursuant to Procedural Rule 8210, requesting that he appear and provide sworn testimony on February 13, 2009.²⁰ The certified mailing was returned to Enforcement marked, "Unclaimed"; the first-class mailing was not returned.²¹

On January 22, 2009, Enforcement received a letter from Kertchaval dated January 12, 2009, stating that he would not be able to attend the on-the-record testimony on January 15, 2009 because of employment obligations.²² On January 23, 2009,

¹⁷ Dennehy Decl. ¶ 8; CX-4.

¹⁸ Dennehy Decl. ¶ 9; CX-5.

¹⁹ Dennehy Decl. ¶ 11.

²⁰ Dennehy Decl. ¶ 12; CX-6.

²¹ Dennehy Decl. ¶¶ 13-14; CX-7.

²² Dennehy Decl. ¶ 15; CX-8.

Enforcement sent Kertchaval another request to provide sworn testimony on February 13, 2009.²³ The USPS returned the certified mailing to Enforcement marked "Unclaimed."²⁴ The first-class mailing was not returned. The January 23 letter requested that Kertchaval contact Enforcement on or before February 6, 2009, to discuss whether he could appear for testimony on February 13, 2009. Enforcement also asked Kertchaval to provide alternative dates if he was unavailable on February 13. The letter also stated that Enforcement could accommodate Kertchaval by conducting the on-the-record testimony where Kertchaval resides in Tennessee.²⁵ Kertchaval did not contact Enforcement as requested.²⁶ On February 13, 2009, he failed to appear and provide the requested testimony.²⁷

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony 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.²⁸

Kertchaval received valid notice of the requests, yet he refused to appear and provide testimony. The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Kertchaval violated Procedural Rule 8210 and Conduct Rule

²³ Dennehy Decl. ¶ 16; CX-9.

²⁴ Dennehy Decl. ¶ 17; CX-10.

²⁵ Dennehy Decl. ¶ 16.

²⁶ *Id.*

²⁷ *Id.* ¶ 19.

²⁸ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *Joseph G. Chiulli*, Exchange Act Release No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

2010. Although the Complaint referred to former NASD Rule 2110, the Hearing Officer finds that Kertchaval received adequate notice of the nature of the charge against him. The Complaint properly charged that he violated Procedural Rule 8210, and the reference to former NASD Rule 2110 gave him adequate notice that violation of Rule 8210 was also a violation of his obligation to observe high standards of commercial honor and just and equitable principles of trade. Both NASD Conduct Rule 2110 and FINRA Rule 2010 provide that a member shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business.

III. Sanctions

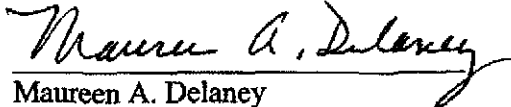
The FINRA Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.²⁹ Here, there is no evidence of any mitigating factors that would justify a lesser sanction. Accordingly, the Hearing Officer will bar Kertchaval from associating with any FINRA member firm in any capacity for violating Procedural Rule 8210 and Conduct Rule 2010.

IV. Order

Kertchaval is barred from associating with any FINRA member firm in any capacity for failing to respond in any manner to FINRA staff's requests for on-the-record testimony, in violation of Procedural Rule 8210 and Conduct Rule 2010. The bar shall

²⁹ FINRA Sanction Guidelines 35 (2007), available at www.finra.org/sanctionguidelines.

become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Maureen A. Delaney
Hearing Officer

Copies to: Tony O'Neal Kertchaval (*via overnight courier and first-class mail*)
Jessica A. Dennehy, Esq. (*via electronic mail and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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

Department of Enforcement,

COMPLAINANT,

V.

**Tony O'Neal Kertchaval
CRD No. 4940460,**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20080126223**

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT & JURISDICTION

1. In January 2005, Respondent Tony O'Neal Kertchaval ("Respondent") became employed with Farmers Insurance Group of Companies ("FIG"). In March 2005, Respondent first entered the securities industry when he became registered with Farmers Financial Solutions, LLC ("FFS"), a FINRA member and the broker-dealer affiliate of FIG. Respondent remained registered with FFS until February 27, 2008, when FFS filed a Form U5 reporting that FIG had terminated Respondent's employment. Since that time, Respondent has not been associated with any other FINRA member.

2. Although Respondent is not currently associated with a FINRA member, he remains subject to the jurisdiction of FINRA pursuant to Article V, Section 4, of the FINRA By-Laws in that the misconduct alleged occurred while Respondent was associated with a member and a complaint was filed within two years following Respondent's registration termination.

OVERVIEW

3. Respondent violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2110 in that he failed to cooperate with Enforcement's investigation.

CAUSE OF ACTION

Failing to Appear and Provide Testimony (FINRA Rules 8210 and 2110)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.

5. Respondent failed to appear and provide on-the-record testimony on January 15, 2009 and February 13, 2009.

6. On December 16, 2008, Enforcement sent a letter to Respondent, requesting that, pursuant to FINRA Rule 8210, Respondent appear and provide on-the-record testimony on January 15, 2009 at 9:30 a.m. at FINRA's office located at 14 Wall Street in New York City regarding his termination from FIG. The letter was sent via certified mail, return receipt requested, and first class mail to Respondent at his last known residential address as listed in the Central Registration Depository ("CRD"). The return receipt associated with the letter was returned to Enforcement with the signature of "Tony Kertchaval" and dated December 22, 2008. The letter sent via first class mail was never returned Enforcement.

7. On January 15, 2009, Respondent failed to appear and provide on-the-record testimony to Enforcement.

8. On January 16, 2009, Enforcement mailed a letter to Respondent, requesting that, pursuant to FINRA Rule 8210, he appear and provide on-the-record testimony on February 13, 2009 at 9:30 a.m. at FINRA's office located at 14 Wall Street in New York City. The letter was sent via certified mail, return receipt requested, and first class mail to Respondent at his last

known residential address as listed in CRD. The letter sent via certified mail was returned to Enforcement and marked "Unclaimed." The letter sent via first class mail was never returned to Enforcement.

9. On January 22, 2009, Enforcement received a letter from Respondent, dated January 12, 2009. In the letter, Respondent stated that due to employment reasons, he would not be able to attend the examination on January 15, 2009.

10. On January 23, 2009, Enforcement mailed a letter to Respondent requesting that, pursuant to FINRA Rule 8210, he appear for testimony on February 13, 2009 at 9:30 a.m. at FINRA's office located at 14 Wall Street in New York City. The letter asked Respondent to contact Enforcement on or before February 6, 2009 to discuss whether he will appear for testimony on February 13, 2009. The letter asked that if Respondent is unable to appear on that date, he contact Enforcement and provide dates on which he will be available for testimony and also offered to conduct the examination in Tennessee in order to accommodate the Respondent. Respondent never contacted Enforcement. This letter was sent to Respondent via certified mail, return receipt requested, and first class mail to his last known residential address as listed in CRD. The letter sent via certified mail was returned to Enforcement and marked "Unclaimed." The letter sent via first class mail was never returned to Enforcement.

11. On February 13, 2009, Respondent failed to appear and provide on-the-record testimony to Enforcement.

12. As a result of this conduct, Respondent violated FINRA Procedural Rule 8210 and Conduct Rule 2110.

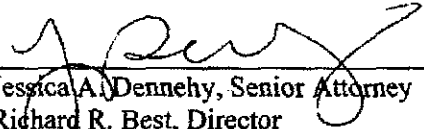
RELIEF REQUESTED

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 and restitution, 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 FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: 6/24/09


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