

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

V.

John E. Herbert
CRD No. 2727923,

Respondent.

DISCIPLINARY PROCEEDING
No. 2008013575001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On July 30 and August 5, 2009, the FINRA staff sent written requests for information to Respondent John E. Herbert pursuant to FINRA Rule 8210. Respondent Herbert failed to provide any of the requested information.

RESPONDENT AND JURISDICTION

2. John E. Herbert entered the securities industry in March 1996 as an associated person of a FINRA member firm. From on or about October 12, 2006, until on or about May 22, 2008, he was registered through LPL Financial Corporation ("the Firm") as a General Securities Principal and General Securities Representative.

000127053 2010

3. On or about May 22, 2008, a Uniform Termination Notice for Securities Industry Registration ("Form U5") was filed by the Firm on behalf of Respondent Herbert. The Form U5 disclosed that Respondent Herbert had been discharged on May 9, 2008.
4. Respondent Herbert is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over him for purposes of this Complaint until May 8, 2010.

**FIRST CAUSE OF ACTION
(FAILURE TO RESPOND (RULE 8210))**

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. In or about May 2008, FINRA initiated an investigation concerning alleged violations by Respondent Herbert. The investigation focused on whether Respondent Herbert had failed to disclose an outside business activity to his employer firm and whether he had made unsuitable recommendations to a customer. In connection with that investigation, FINRA staff requested information from Respondent Herbert.
7. Respondent Herbert's residential address, as reflected in FINRA's Central Registration Depository ("CRD"), is 412 10th St., Suite B, Lyndon, Washington 98264 ("the CRD Address"). The CRD Address contains a spelling error. The correct version of Respondent Herbert's address is 412 10th St., Suite B, *Lynden*, Washington 98264 ("the Corrected Address"). The FINRA staff has been unable to find a more current address for Respondent Herbert.

First Request for Information

8. On July 30, 2009, FINRA staff sent a request for information pursuant to FINRA Rule 8210 relating to the subject matter of the FINRA investigation, via U.S. Postal

Service first class mail and certified mail, return receipt requested, to Respondent Herbert at the CRD Address and the Corrected Address. The first request letter requested a response no later than August 13, 2009.

9. The envelope sent to the CRD Address via first class mail on July 30, 2009, was returned by the U.S. Postal Service, marked "moved left no address, unable to forward, return to sender." The FINRA staff received the returned envelope on August 5, 2009. The envelope sent to the CRD Address via certified mail on July 30, 2009, was returned by the U.S. Postal Service, marked "moved left no address, unable to forward, return to sender." The FINRA staff received the returned envelope on August 4, 2009.
10. The envelope sent to the Corrected Address via first class mail on July 30, 2009, was returned by the U.S. Postal Service, marked "moved left no address, unable to forward, return to sender." The FINRA staff received the returned envelope on August 3, 2009. The envelope sent to the Corrected Address via certified mail on July 30, 2009, was returned by the U.S. Postal Service, marked "moved left no address, unable to forward, return to sender." The FINRA staff received the returned envelope on August 4, 2009.
11. Respondent Herbert did not respond in any fashion to the staff's first request for information.

Second Request for Information

12. As of August 5, 2009, all four envelopes sent to Respondent Herbert on July 30, 2009, had been returned by the U.S. Postal Service, so it was clear that Respondent

Herbert would not respond to the staff's first request information. On August 5, 2009, FINRA staff sent a second request for information pursuant to FINRA Rule 8210 relating to the subject matter of the FINRA investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to Respondent Herbert at the CRD Address and the Corrected Address. The second request letter requested a response no later than August 19, 2009.

13. The envelope sent to the CRD Address via first class mail on August 5, 2009, was returned by the U.S. Postal Service, marked "moved left no address, unable to forward, return to sender." The envelope sent to the CRD Address via certified mail on July 30, 2009, was returned by the U.S. Postal Service, marked "moved left no address, unable to forward, return to sender."
14. The envelope sent to the Corrected Address via first class mail on August 5, 2009, was returned by the U.S. Postal Service, marked "moved left no address, unable to forward, return to sender." The envelope sent to the Corrected Address via certified mail on July 30, 2009, was returned by the U.S. Postal Service, marked "moved left no address, unable to forward, return to sender."
15. Respondent Herbert did not respond in any fashion to the staff's second request for information.
16. To date, FINRA has not received any response from Respondent Herbert to the foregoing requests for information.
17. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rule 8210 by Respondent Herbert. Such conduct is inconsistent with high standards

of commercial honor and just and equitable principles of trade and a violation of
FINRA Conduct Rule 2010.

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 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: February 4, 2010

David Utevsky
David Utevsky, Senior Regional Counsel
Jacqueline D. Whelan, Regional Chief Counsel
FINRA Department of Enforcement
601 Union Street, Suite 1616
Seattle, WA 98101
Phone (206) 624-0790; Fax: (206) 623-2518