

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HERNAN ARBIZU
(CRD No. 4610869),

Respondent.

Disciplinary Proceeding
No. 2008013619001

Hearing Officer – MAD

DEFAULT DECISION

October 7, 2010

The Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to requests for information, in violation of Conduct Rule 2010 and Procedural Rule 8210.

Appearances

Thomas G. Kay, Principal Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Hernan Arbizu.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) filed a Complaint on May 21, 2010. The Complaint alleges that Respondent Hernan Arbizu (“Arbizu”) violated Procedural Rule 8210 and Conduct Rule 2010 by failing to respond to FINRA information requests regarding FINRA’s investigation of the circumstances of his termination from J.P. Morgan Securities, Inc. (“J.P. Morgan”).¹

Arbizu did not answer or otherwise respond to the Complaint. Consequently, on August 16, 2010, Enforcement filed a Motion for Entry of Default Decision and Request for

¹ The FINRA Rules are available at www.finra.org/Rules.

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Sanctions (“Default Motion”). The Default Motion is supported by the Declaration of Thomas G. Kay, Esq. (“Kay Decl.”) and 23 exhibits. Arbizu did not respond to the Motion.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction and Origin of the Investigation

Arbizu first became registered with FINRA as a General Securities Representative (“GSR”) in January 2003.³ From January 2007 through May 2008, Arbizu was registered with FINRA as a GSR through his association with J.P. Morgan.⁴ On May 30, 2008, J.P. Morgan filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) on his behalf, indicating that he was terminated on May 30, 2008, for refusing to cooperate with an internal investigation.⁵ FINRA began its investigation after reviewing the Form U5 filed by J.P. Morgan.

Although Respondent has not been registered with FINRA since May 30, 2008, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA, and (2) the Complaint charges him with failing to respond to FINRA’s requests for information made during the two-year period following the termination of his registration.⁶

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 Kay Decl., ¶ 4; CX-1.

⁴ Kay Decl. ¶¶ 4-5; CX-1.

⁵ Kay Decl. ¶ 5; CX-2, at 1.

⁶ Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/rules (then follow “FINRA Manual” hyperlink to “Corporate Organization: Bylaws”).

B. Respondent's Default

On May 20, 2010, Enforcement served the Complaint and First Notice of Complaint on Arbizu at his last recorded residential address shown in FINRA's Central Registration Depository (the "CRD Address") by first-class and certified mail.⁷ The United States Postal Service ("USPS") did not return the first-class mailing to Enforcement; the certified mailing was returned stamped "not deliverable."⁸ Enforcement also sent the Complaint and Notice of Complaint to Arbizu by International Federal Express to his address in Argentina.⁹ The Federal Express package was signed for by "Virginia" on May 26, 2010.¹⁰

On June 21, 2010, Enforcement mailed the Complaint and Second Notice of Complaint to Arbizu at his CRD Address by first-class and certified mail.¹¹ The USPS returned both the first-class mailing and the certified mailing to Enforcement marked "UTF [unable to forward]."¹² Enforcement also sent the Complaint and Second Notice of Complaint to Arbizu's Argentina address by International Federal Express mail.¹³ The Federal Express package was signed for by "A. Arvizu [sic]" on June 23, 2010.¹⁴

To date, Arbizu has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.

Enforcement properly served Arbizu with the Complaint by mailing the Complaint and the First and Second Notices of Complaint in accordance with FINRA Procedural Rule

⁷ Kay Decl. ¶ 15; CX-15.

⁸ Kay Decl. ¶ 18; CX-18.

⁹ Kay Decl. ¶ 16; CX-16. On December 4, 2009, Arbizu sent an email to Enforcement, stating he was aware of FINRA's investigation and providing his contact address in Argentina. Kay Decl. ¶ 14; CX-14.

¹⁰ Kay Decl. ¶ 16; CX-17.

¹¹ Kay Decl. ¶ 19; CX-19.

¹² Kay Decl. ¶¶ 22-23; CX-22, 23.

¹³ Kay Decl. ¶ 20; CX-20, 21.

¹⁴ Kay Decl. ¶ 20; CX-21.

9134(b)(1), thereby giving him constructive notice of this disciplinary proceeding.¹⁵ By failing to answer the Complaint, Arbizu defaulted. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the Complaint admitted and grants Enforcement's Default Motion.

C. Failure to Respond to Information Requests

The Complaint alleges that Arbizu violated Procedural Rule 8210 and Conduct Rule 2010 by failing to respond to requests for information. The requests were made pursuant to Procedural Rule 8210, and asked Arbizu to provide a written statement of the circumstances surrounding his termination from J.P. Morgan.¹⁶

On January 16, 2009, FINRA Staff sent the first request for information by certified and first-class mail to Arbizu at his CRD Address.¹⁷ The USPS returned the certified mailing marked "unclaimed, unable to forward;" the first-class mailing was not returned.¹⁸

On February 10, 2009, FINRA Staff sent a second request for the same information to Arbizu at his CRD Address by certified and first-class mail.¹⁹ Again, the USPS returned the certified mailing marked "unable to forward."²⁰ The first-class mailing was not returned.²¹

In April or May 2009, Enforcement learned that Arbizu was residing in Argentina, and was represented by an attorney in an extradition proceeding. On June 4, 2009, Enforcement sent a letter to Arbizu's attorney, attaching the January 16 and February 10

¹⁵ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (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) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹⁶ Kay Decl. ¶¶ 8, 9, 11.

¹⁷ Kay Decl. ¶ 8; CX-4.

¹⁸ Kay Decl. ¶ 8; CX-5.

¹⁹ Kay Decl. ¶ 9; CX-6.

²⁰ Kay Decl. ¶ 9; CX-7.

²¹ Kay Decl. ¶ 9.

letters, and requesting that Arbizu provide a written response.²² Arbizu's attorney responded to Enforcement, stating that he had not been authorized by Arbizu to represent him in the FINRA proceeding but that he had provided all of the information request letters to Arbizu.²³ To date, Arbizu has failed to respond to the written information requests.²⁴

These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Arbizu failed to respond in any manner to the requests for information. He thereby violated Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.²⁵

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 8210.²⁶ Here, there is no evidence of any mitigating factors that would justify a lesser sanction. Accordingly, the Hearing Officer will bar Arbizu from associating with any FINRA member firm in any capacity.

IV. Order

Arbizu is barred from association with any FINRA member firm in any capacity for his failure to respond to requests for information, in violation of Conduct Rule 2010 and

²² Kay Decl. ¶ 11; CX-8, 9, 10.

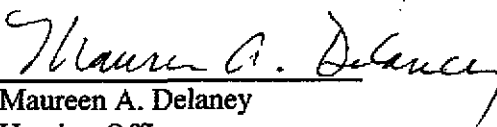
²³ Kay Decl. ¶ 12; CX-11, 12.

²⁴ Kay Decl. ¶ 13.

²⁵ *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *19 n.28 (July 1, 2008) (citations omitted); *Dep't of Enforcement v. Hooper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

²⁶ FINRA Sanction Guidelines 35 (2007), available at www.finra.org/sanctionguidelines.

Procedural Rule 8210. The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Maureen A. Delaney
Hearing Officer

Copies to:
Herman Arbizu (*via overnight courier and first-class mail*)
Thomas G. Kay, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

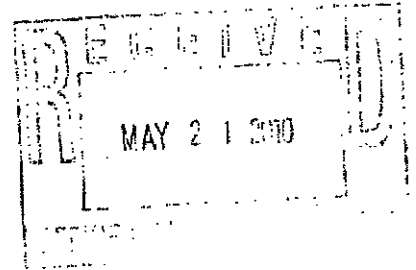
Complainant,

v.

Hernan Arbizu (CRD No. 4610869),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008013619001



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Hernan Arbizu ("Arbizu") failed to cooperate with requests for information made by the Department of Enforcement ("Enforcement") of FINRA between January 16, 2009 and June 4, 2009.

RESPONDENT(S) AND JURISDICTION

2. Arbizu entered the financial industry in 2002 with UBS International, Inc. ("UBS") as a financial advisor in New York City, New York.
3. In November 2006, Arbizu voluntarily terminated his employment with UBS.
4. In November 2006, Arbizu became employed as a private banker at JP. Morgan Securities, Inc. ("JP. Morgan") in New York City, New York.

5. Between 2002 and 2008, Arbizu obtained the following licenses: Series 7 and 66.
6. On May 30, 2008, J.P. Morgan terminated Arbizu's employment for "refus[ing] to cooperate with an internal investigation" into "possible fraud relating to a client's bank account."
7. Although Respondent has not been associated with a FINRA regulated entity since May 30, 2008, 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 after the date upon which he ceased to be associated with a FINRA member and (2) the complaint charges him with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
Failure to Cooperate
(FINRA Rules 8210 and 2010)

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.
9. On or about January 16, 2009, Enforcement issued a request pursuant to FINRA Rule 8210 requiring Arbizu to provide a written statement regarding the circumstances of his termination. The request was sent via certified mail, return receipt requested and regular mail to Arbizu's CRD Address. The envelope containing the return receipt for the certified copy was returned to sender unclaimed on February 12, 2009. The postal authorities did not return the first class letter. Arbizu did not respond to Enforcement.

10. On or about February 10, 2009, Enforcement issued a second request pursuant to FINRA Rule 8210 requiring Arbizu to provide a written statement regarding the circumstances of his termination. The request was sent via certified mail, return receipt requested and regular mail to Arbizu's CRD Address. The envelope containing the return receipt for the certified copy was returned to sender as undeliverable on February 24, 2009. The postal authorities did not return the first class letter. Arbizu did not respond to Enforcement.

11. In April or May 2009, Enforcement learned that Arbizu was residing in Buenos Ares, Argentina, and contesting extradition to the United States of America in connection with related criminal charges. At that time, Enforcement also became aware that Arbizu was represented by counsel, Pablo Argibuy Molina ("Molina"), in the extradition proceeding in Argentina.

12. On June 4, 2009, Enforcement sent a letter to Molina, attaching the correspondence dated January 16, 2009 and February 12, 2009, again requesting that Arbizu provide a written statement regarding the circumstances of his termination. The request was sent via International Federal Express to Molina's business address in Buenos Ares, Argentina. Federal Express confirmed delivery on June 9, 2009.

13. On June 10, 2009, Molina responded via e-mail to Enforcement by stating "We have not been authorized by Mr. Arbizu to represent [him] before any United States body. All correspondence that has been sent has been given to Mr. Arbizu."

14. To date, Arbizu has failed to provide any written statement regarding the circumstances of his termination.

15. By engaging in the foregoing conduct, Arbizu violated FINRA Rules 8210 and 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 FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date:

5/19/10



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