

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JERRY JASON RICE
(CRD No. 4203426),

Respondent.

Disciplinary Proceeding
No. 20080145071

Hearing Officer – SNB

DEFAULT DECISION

June 10, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide information and testimony, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. In light of the bar, no additional sanction is imposed for executing an unauthorized trade in a customer's account, in violation of NASD Conduct Rule 2110.

Appearances

Clarence E. Sanders, Jr., New York, NY, for the Department of Enforcement.

Jerry Jason Rice, *pro se*.

DECISION

I. Background - Respondent's Default

The Department of Enforcement ("Enforcement") filed a two-cause Complaint in this disciplinary proceeding on July 16, 2010, charging Respondent Jerry Jason Rice ("Respondent") with: 1) executing an unauthorized trade in a customer's account, in violation of NASD Conduct

Rule 2110;¹ and 2) failing to provide information and testimony, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

On September 21, 2010, Respondent filed an answer to the Complaint. Respondent attended the October 14, 2010, pre-hearing conference, during which he provided his current address ("the Kerman address") and an email address. On January 11, 2011, Enforcement filed a motion to amend the Complaint along with the Amended Complaint, which added to the Rule 8210 charge allegations that Respondent failed to respond to a post-complaint request for testimony. The motion and Amended Complaint were served on Respondent by express, certified, and first-class mail to Respondent's address that was listed for him in the Central Registration Depository (the "CRD address"), the Kerman address, and two alternate addresses.²

The Hearing Officer granted Enforcement's motion to amend the Complaint and issued an order setting a deadline of February 25, 2011, for Respondent to file an answer to the Amended Complaint. The order was sent to Respondent by first-class mail to his CRD address, the Kerman address, and two alternate addresses. Respondent did not file an answer. The Hearing Officer then issued an Order for Respondent to show cause, by March 15, 2011, why he should not be held in default. The order was sent to Respondent by first-class mail to his CRD address, the Kerman address, two alternate addresses, and his email address. Respondent did not

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). For the First Cause of Action, this decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. This decision refers to and relies on the FINRA Procedural and Conduct Rules for the Second Cause of Action.

² The amendment withdrew certain factual allegations in the first charge and added allegations to the second charge to reflect that Respondent failed to respond to an additional Rule 8210 request following the filing of the Complaint.

respond. Based upon the foregoing, the Deputy Chief Hearing Officer issued an order holding Respondent in default.³

On April 15, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions. The motion was sent to Respondent by first-class mail to his CRD address, the Kerman address, two alternate addresses, and Respondent's email address. Respondent did not respond. For the reasons set forth below, the Hearing Officer granted Enforcement's Default Motion and deemed the allegations in the Amended Complaint admitted.⁴

II. Jurisdiction

Respondent was first registered with FINRA in September 2000. He was registered with WAMU Investments, Inc. (the "Firm") beginning in 2007. CX-1. On July 31, 2008, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing the termination of Respondent's employment on July 18, 2008. The Firm filed amended Forms U5 on July 14, 2009, September 30, 2009, and March 3, 2010 (the "Amended Forms U5"), which included newly disclosed customer complaints against Respondent alleging sales practice violations. Complaint ¶ 6; CX-3-CX-5.

Although Respondent is not currently registered with a FINRA member firm, FINRA has jurisdiction for purposes of this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Amended Complaint was filed within two years following the Firm's filing of an amended Form U5 disclosing Respondent's possible misconduct, and it

³ See Procedural Rules 9215(e), 9269, and 9280.

⁴ *Id.* The factual determinations in this decision are based on the allegations of the attached Amended Complaint and the materials Enforcement filed with its Motion for Entry of Default Decision and Request for Sanctions, which included the Declaration Supporting Motion for Entry of Default Decision, signed by Clarence E. Sanders, Jr., Esq., counsel for the Department of Enforcement. Counsel's declaration is cited herein as "Decl. ¶ ____." References to the exhibits attached to Enforcement's motion are cited as "CX-__."

charges him with failing to respond to Rule 8210 requests for information while he was subject to FINRA's jurisdiction.⁵

III. Violations

A. Unauthorized Trading

The First Cause of Action alleges that Respondent executed an unauthorized trade in a customer account. Specifically, on or about July 7, 2008, Respondent purchased 100 Federal Home Loan Mortgage Corporation 6% bonds for \$100,000 for customer EG's account without his knowledge or consent. Amended Complaint ¶ 13; CX-6; Decl. ¶ 13.

These allegations are sufficient to establish, for purposes of this default decision, that Respondent executed an unauthorized transaction in EG's account, in violation of NASD Conduct Rule 2110.⁶

B. Failure to Provide Information and Testimony

The Second Cause of Action alleges that Respondent failed to respond to one Rule 8210 request for information and two requests for testimony. Specifically, on February 1, 2010, FINRA staff sent a letter to Respondent requesting information about allegations that Respondent made misrepresentations and engaged in unsuitable trading in the accounts of customers TG, LG, and FV. The request was sent by first-class and certified mail to Respondent at his CRD address as well as an alternate address. Amended Complaint ¶ 17; Decl. ¶ 16.

Respondent did not respond to the requests for information. *Id.*

FINRA Staff also made two requests that Respondent appear for testimony. On April 8, 2010, Staff sent the first request to Respondent's CRD address and an alternate address, by certified and first-class mail. Respondent did not appear as requested. Amended Complaint ¶

⁵ See 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 *Dep't of Enforcement v. Sears*, No. C07050042, 2007 NASD Discip. LEXIS 26, at *9-10 (N.A.C. Sept. 24, 2007).

18; Decl. ¶ 17. On October 1, 2010, Staff sent the second request to Respondent by express, certified, and first-class mail to Respondent's CRD and two alternate addresses, including an address provided by Respondent during a September 2, 2010, telephone conversation with Staff. Amended Complaint ¶¶ 19-20; Decl. ¶¶ 18-19. The testimony was scheduled for October 21, 2010. Amended Complaint ¶ 20; Decl. ¶ 19. During an October 14, 2010, telephone conversation Respondent confirmed to Staff that he had received the request and planned to appear and testify. Amended Complaint ¶ 22; Decl. ¶ 22. However, Respondent did not appear. Amended Complaint ¶ 25; Decl. ¶ 23. To date, Respondent has failed to provide the requested information and testimony. Amended Complaint ¶ 26.

Pursuant to FINRA Rule 8210, Respondent was required to provide information and appear for testimony, yet he failed to do so. These allegations are sufficient to establish, for purposes of this default decision, that Respondent failed to provide information and testimony, in violation of FINRA Procedural Rule 8210. A violation of FINRA Rule 8210 is also a violation of FINRA Conduct Rule 2010.⁷

IV. Sanctions

A. Unauthorized Trading

For executing an unauthorized transaction in a client's account, the FINRA Sanction Guidelines ("Sanction Guidelines") recommend a fine of \$5,000 to \$75,000 and a suspension of 10 business days to one year.⁸ In egregious cases, the Sanction Guidelines recommend a longer suspension or a bar. The principal considerations are whether respondent misunderstood his or her authority or the terms of the customer's orders, and whether the unauthorized trading was quantitatively or qualitatively egregious. Here, there is no evidence regarding whether

⁷ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

⁸ Sanction Guidelines at 100 (2011 ed.).

respondent misunderstood his authority and respondent is charged with only one unauthorized transaction. Accordingly, a sanction at the low end of the range in the Guidelines would be warranted. However, in light of the bar imposed for failing to provide information and testimony discussed below, no sanction is imposed for unauthorized trading.⁹

B. Failure to Respond to Requests for Information and Testimony

A bar is standard where a respondent fails to respond in any manner to a request for information or testimony issued pursuant to Procedural Rule 8210.¹⁰ Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years. Respondent failed to respond to a request for information and two requests for testimony. There is no mitigating evidence. Accordingly, a bar is the appropriate sanction under the facts and circumstances of this case for Respondent's violations of FINRA Procedural Rule 8210 and Conduct Rule 2010.

V. Conclusion

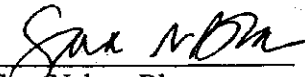
Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide information and testimony, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. In light of the bar, no additional sanction is imposed for executing an unauthorized trade in a customer's account, in violation of

⁹ Enforcement did not seek restitution because the Firm reversed the unauthorized trade.

¹⁰ *Guidelines* at 33.

NASD Conduct Rule 2110. The bar will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to: Jerry Jason Rice (*via electronic and first-class mail*)
Clarence E. Sanders, Jr., 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.

Jerry Jason Rice (CRD No. 4203426),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080145071

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. Between approximately June 2008 and July 2008, Respondent Jerry Jason Rice ("Respondent") made material misrepresentations regarding a bond investment to a customer and caused bonds to be purchased in a customer's account without authorization. Respondent also failed to comply with requests by FINRA for information and testimony.
2. By virtue of this conduct, Respondent violated NASD Conduct Rule 2110, FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

RESPONDENT AND JURISDICTION

3. In June 2000, Respondent Jerry Jason Rice ("Respondent") entered the securities industry with Waddell & Reed, Inc., and was approved as a registered representative in July 2000. Respondent remained associated with Waddell & Reed, Inc. until the termination of his employment in or about September 2002.

4. Thereafter, Respondent was employed in registered capacities with Cal Fed Investments from August 2002 to February 2003 and Citicorp Investment Services from February 2003 to August 2006. Rice was unemployed between August 2006 and August 2007.
5. From August 2007 through July 18, 2008, Respondent was employed as a registered representative in Fresno, California banking branch offices of WAMU.
6. On or about July 31, 2008, WAMU filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting the termination of Respondent's employment on July 18, 2008.
7. In Amended Forms U5 filed on July 14, 2009, September 30, 2009, and March 3, 2010, the Firm, for the first time, reported separate customer complaints against Rice. The Amended Forms U-5 included allegations that Respondent may have failed to follow customer instructions, made misrepresentations to customers and engaged in unsuitable trading in a customer's accounts.
8. Respondent is not currently associated with a FINRA regulated entity.
9. Although Respondent is currently not associated with a FINRA regulated entity, 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 of Respondent's registration termination.
10. In addition, the Complaint charges Respondent with misconduct committed while he was associated with a FINRA regulated entity, failing to respond to FINRA requests for information and failing to appear for on-the-record testimony, during the two-year period

after the date upon which Respondent ceased to be associated with a FINRA regulated entity.

11. Further, the Complaint was filed within two years of the filing of Amended Forms U-5, which reported that Rice may have engaged in conduct actionable under applicable statutes, rules or regulations.

FIRST CAUSE OF ACTION

Unauthorized Transaction

NASD Conduct Rule 2110

12. Enforcement realleges and incorporates by reference paragraphs 3 through 11, and 11 above.
13. On or about July 7, 2008, Respondent purchased 100 Federal Home Loan Mortgage Corporation ("FHLMC") 6% bonds for \$100,000 for Customer EG's account, without Customer EG's knowledge or authorization.
14. As a result of the foregoing conduct, Respondent violated NASD Rule 2110 by causing one or more unauthorized transactions to be executed in a customer's account.

SECOND CAUSE OF ACTION

Failure to Comply with Requests for Information and Testimony

FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010

15. Enforcement realleges and incorporates by reference paragraphs 3 through 11 above.
16. On two occasions, Respondent failed to provide information and/or testimony requested pursuant to FINRA Rule 8210.

17. On February 1, 2010, Enforcement sent a letter to Respondent, requesting that, pursuant to FINRA Rule 8210, he provide a detailed written explanation concerning Enforcement's investigation of misrepresentation and unsuitable trading allegations regarding the securities accounts of Customers TG, EG, and FV. The letter was sent via certified mail and return receipt requested and a copy was sent by first class mail to Respondent at his last known residential address as reflected in the Central Registration Depository: [REDACTED] (the "CRD" Address). Copies of the letter were also sent via certified mail and return receipt requested and by first class mail to an alternate address provided by Respondent's wife: [REDACTED] (the "Alternate Address"). The letter sent to the CRD Address and the copy sent to the Alternate Address by certified mail, were returned to Enforcement. The copies of the letter sent by first class mail to the CRD Address and the Alternate Address, were never returned to Enforcement. To date, Respondent has failed to provide the requested information.

18. On April 8, 2010, Enforcement sent a letter to Respondent, requesting that, pursuant to FINRA Rule 8210, he appear and provide testimony on April 23, 2010 at Enforcement's offices located at 14 Wall Street, 14th Floor, New York, New York 10005. The letter was sent by Express mail and copies were sent by certified mail and return receipt requested and by first class mail to the CRD Address. Copies of the letter were also sent by Express mail, certified mail and return receipt requested, and by first class mail to the Alternate Address. The letter sent by Express mail and the copy sent by certified mail to the CRD Address were returned to Enforcement. The copy of the letter sent by first class mail to the CRD address was not returned to Enforcement. The copies of the letter sent by

Express mail and by certified mail to the Alternate Address were returned to Enforcement.

The copy of the letter sent by first class mail to the Alternate address was not returned.

Respondent failed to appear on April 23, 2010 and provide the requested testimony.

19. To date, Respondent has failed to provide the requested information and testimony.

20. Accordingly, Respondent violated FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010 by failing to provide the requested information and testimony.

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: July 16, 2010



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