

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RUBEN A. CRUZ (also known as RUBEN
CRUZ-ALVAREZ) (CRD No. 5070572),

Respondent.

Disciplinary Proceeding
No. 2008014623501

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

August 13, 2009

The Respondent was barred for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to requests for information. In light of the bar, no additional sanction was imposed for his violation of Conduct Rule 2110 and IM-1000-1 by failing to disclose on his Form U4 that he had been charged with two felonies.

Appearances

Sandra J. Harris, Deputy Regional Chief Counsel, Los Angeles, CA, for the Department of Enforcement.

No appearance by or for Ruben A. Cruz.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") filed the attached Complaint on April 24, 2009. The First Cause of Action alleges that Respondent Ruben A. Cruz, also known as Ruben Cruz-Alvarez ("Cruz"), violated Conduct Rule 2110 and Membership and Registration Rule Interpretive Material ("IM") 1000-1 by failing to disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") that in June 2006 he had been charged with two felonies—kidnapping and burglary. The Second and Third Causes of Action allege that

Cruz violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to six requests for information FINRA staff issued in connection with FINRA's investigation of facts and circumstances surrounding Cruz's failure to disclose the felony charges on the Form U4 he signed on January 8, 2007.¹

Cruz did not answer or otherwise respond to the Complaint. Consequently, on July 24, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Sandra J. Harris ("Harris Decl.") and seven exhibits. Cruz did not respond to the motion.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Cruz was associated with WM Financial Services, Inc. (now known as WaMu Investments, Inc.) ("WaMu") from January 8, 2007, until May 4, 2007.² He was registered as an Investment Company and Variable Contracts Products Representative through WaMu from January 12, 2007, until May 17, 2007.³ Cruz has not been associated with a member firm or registered with FINRA since May 17, 2007.⁴

Although Cruz is not currently registered with FINRA, FINRA has jurisdiction of this disciplinary 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

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 NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Complainant's Exhibit (CX)-1. Cruz first entered the securities industry in 2005 with another FINRA member firm.

³ CX-1, at 3.

⁴ *Id.* at 4.

FINRA, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following the termination of his registration.⁵

B. Respondent's Default

On April 24, 2009, Enforcement sent the Complaint and Notice of Complaint to Cruz by first-class and certified mail (return receipt requested) to his residential address recorded in the Central Registration Depository ("CRD Address") and to an alternative address Cruz had provided to FINRA staff.⁶ The receipt for the certified mailing sent to the CRD Address bears the signature of "Silvia Alvarez" and shows that the mailing was delivered on April 28, 2009.⁷ Cruz did not respond to the First Notice of Complaint.

On May 27, 2009, Enforcement served Cruz with the Complaint and Second Notice of Complaint, by first-class and certified mail, to his CRD Address and the alternate address. The receipt for the certified mailing sent to the CRD Address bears the signature of "Ruben Alvarez" and shows that the mailing was delivered on June 2, 2009.⁸ Cruz did not respond to the Second Notice of Complaint.

Cruz defaulted by failing to answer the Complaint.⁹ 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 motion for entry of a default decision.

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

⁶ Harris Decl. ¶ 5.

⁷ *Id.*; CX-5.

⁸ Harris Decl. ¶ 6; CX-7.

⁹ *Department of Enforcement v. Reynolds 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)). Moreover, the signed mail receipts indicate that Cruz received actual notice of this proceeding.

C. False Form U4

On January 8, 2007, Cruz applied for registration as an Investment Company and Variable Contracts Products Representative by completing a Form U4, which WaMu submitted to FINRA on January 12, 2007.¹⁰ In response to Question 14A(1)(b) that asked whether Cruz had ever been charged with any felony, Cruz answered “No.”¹¹ Cruz’s answer was false. In fact, on June 5, 2006, he was charged by the State of Arizona with kidnapping, a class 2 felony, and burglary, a class 3 felony, in the Superior Court for Maricopa County, Arizona.¹²

WaMu discovered the undisclosed charges on January 18, 2007, and commenced an investigation. Based upon its investigation, WaMu updated his Form U4 on April 27 and May 3, 2007, and then terminated his employment on May 4, 2007.¹³

Applicants for registration with FINRA must fully and accurately disclose all material information in response to questions on a Form U4. “[T]he candor and forthrightness of applicants is critical to the effectiveness of the screening process” because the Form U4 is used by FINRA and other self-regulatory organizations, state regulators, and broker-dealers to determine and monitor the fitness of securities professionals.¹⁴ A Form U4 that is inaccurate or incomplete so as to be misleading may be deemed to be conduct inconsistent with just and equitable principles of trade in violation of Conduct Rule 2110.¹⁵

¹⁰ CX-2.

¹¹ CX-1.

¹² Harris Decl. ¶ 7.

¹³ *Id.* ¶ 4.

¹⁴ *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005), *aff’d*, 179 Fed. Appx. 702 (D.C. Cir. 2006).

¹⁵ See IM-1000-1; *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *petition for rev. denied*, 105 F.3d 664 (9th Cir. 1996).

Based on the allegations in the Complaint, the Hearing Officer finds that Cruz violated Conduct Rule 2110 and IM-1000-1 by not disclosing on his Form U4 that he had been charged with two felonies.¹⁶

D. Failure to Respond to Information Requests

The Second and Third Causes of Action allege that Cruz failed to respond to six written requests that he provide information regarding his failure to disclose the felony charges on his Form U4.

The first four requests were dated September 2, September 28, November 4, and December 10, 2008. FINRA staff sent each to Cruz at his CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210. In addition, the staff sent three of the requests to other addresses the staff thought might be more current than the CRD Address. Three of the receipts for the certified mailings sent to the CRD Address were returned with the signature of "Silvia Alvarez."¹⁷

On December 16, 2008, Cruz called the FINRA examiner who issued the requests for information and said that he would respond in writing by December 24. Cruz also provided the examiner with his current address and telephone number.¹⁸ When the examiner did not receive the response as promised, he called Cruz on January 7, 2009. In that conversation, Cruz promised to send a response by overnight mail on January 9.¹⁹ Despite Cruz's assurances, the staff never received any of the requested information.

¹⁶ Enforcement did not allege that Cruz willfully failed to disclose the two felony charges on his Form U4. Therefore, the Hearing Officer did not find that he was subject to statutory disqualification, pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934.

¹⁷ Harris Decl. ¶¶ 9-12.

¹⁸ *Id.* ¶ 13.

¹⁹ *Id.* ¶ 14.

Because the first four requests “mistakenly cited to ‘FINRA Rule 8210’ rather than ‘NASD Rule 8210,’” the staff sent Cruz two additional requests for the same information on February 6 and March 2, 2009.²⁰ The staff sent the requests to Cruz’s CRD Address and the new address Cruz had provided to the staff by first-class and certified mail. The receipt for the first certified mailing sent to the CRD Address bears the signature, “Pedro Cruz,” and the receipt for the second bears the signature, “Silvia Alvarez.”²¹ Cruz did not respond to either of the additional requests.²²

The Hearing Officer finds that the allegations in the Second and Third Causes of Action are sufficient to establish, for purposes of this default decision, that Cruz violated Procedural Rule 8210 and Conduct Rule 2110.

III. Sanctions

A. Failure to Respond to Requests for Information

The FINRA Sanction Guidelines (“Guidelines”) recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.²³ Here, Cruz failed to respond in any manner to multiple written requests that he provide information in connection with the Staff’s investigation into the circumstances surrounding his failure to disclose the felony charges on his Form U4. There are no mitigating factors that would justify a less severe sanction. Accordingly, the Hearing Officer will bar Cruz from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

²⁰ Complainant’s Mem. P.& A. ¶ E.

²¹ Harris Decl. ¶¶ 16-17.

²² *Id.*

²³ FINRA Sanction Guidelines 35 (2007), available at www.finra.org/sanctionguidelines.

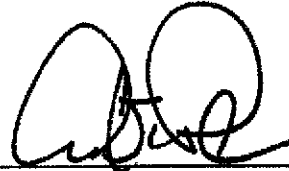
B. False Form U4

For filing a false, misleading or inaccurate Form U4 or failing to file necessary amendments to a Form U4, the Guidelines recommend that an individual be fined from \$2,500 to \$50,000 and suspended in all capacities for five to 30 business days. In egregious cases, the Guidelines call for consideration of a suspension in any or all capacities of up to two years, or a bar.²⁴ One of the principal considerations for determining sanctions for such a violation is the nature and significance of the information at issue.²⁵

While Cruz's violation of Rule 2110 and IM-1000-1 is serious and would merit significant sanctions, in light of the bar for his failure to respond to FINRA's information requests, no additional sanctions will be imposed for this violation.²⁶

IV. Order

Cruz is barred from association with any member firm in any capacity for his failure to respond to requests for information, 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.



Andrew H. Perkins
Hearing Officer

²⁴ FINRA Sanction Guidelines 73-74.

²⁵ *Id.*

²⁶ Enforcement recommended a six-month suspension and a \$5,000 fine if Cruz was not barred for his failure to respond to the Rule 8210 requests for information. Given the serious nature of the felony charges, the Hearing Officer notes that sanctions at least as serious as those Enforcement recommended would be appropriate under the facts and circumstances of this case had he not been barred for his other misconduct.

Copies to:

Ruben A. Cruz (by FedEx, next-day delivery, and first-class mail)

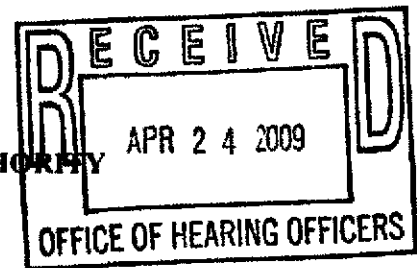
Sandra J. Harris, Esq. (by first-class and electronic mail)

David Sonnenberg, Esq. (by electronic mail)

Mark P. Dauer, Esq. (by electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS



DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RUBEN A. CRUZ, ALSO KNOWN AS RUBEN
CRUZ-ALVAREZ (CRD No. 5070572),

Respondent.

Disciplinary Proceeding
No. 2008014623501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. While associated with a FINRA member firm, Respondent Ruben A. Cruz, also known as Ruben Cruz-Alvarez, failed to disclose on a Form U4 (Uniform Application for Securities Industry Registration or Transfer) that he had been charged with two felony counts in a proceeding filed in Arizona. Additionally, in connection with FINRA staff's investigation into the Form U4 nondisclosure, Cruz failed to respond to six Rule 8210 requests for information and documents. Cruz's failure to disclose the felony charges violated NASD Conduct Rule 2110 and IM-1000-1 and his failure to respond to the staff's information and document requests violated NASD Rule 8210, NASD Conduct Rule 2110, FINRA Rule 8210, and FINRA Conduct Rule 2010.

RESPONDENT AND JURISDICTION

2. From January 8, 2007 through May 4, 2007, Cruz was associated with FINRA member WM Financial Services, Inc., nka WaMu Investments, Inc. (the Firm) as an Investment Company Products/Variable Contracts Representative. Cruz is not presently associated with a FINRA member firm. Pursuant to Article V, Section 4 of FINRA's By-Laws, Cruz is subject to FINRA's jurisdiction for purposes of this Complaint.

FIRST CAUSE OF ACTION

(Failure to Amend Form U4)

(Violation of NASD Conduct Rule 2110 and IM-1000-1)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.

4. On January 8, 2007, Cruz signed a Form U4 in connection with his association with the Firm. The Firm submitted that Form U4 to FINRA.

5. Question 14A(1)(b) of the Form U4 asked whether Cruz had ever been charged with any felony. Cruz responded "no."

6. Cruz's response was false. On June 5, 2006, in a Direct Complaint filed in Arizona Superior Court, County of Maricopa, Cruz was charged with two felony counts: 1) kidnapping, a class 2 felony and a domestic violence offense; and 2) burglary in the second degree, a class 3 felony and a domestic violence offense. *The State of Arizona v. Ruben Cruz-Alvarez*, CR 2006-130581-001 SE. On December 15, 2006, the court dismissed the case without prejudice.

7. By failing to disclose the felony charges in his Form U4, Cruz violated NASD Conduct Rule 2110 and IM-1000-1.

SECOND CAUSE OF ACTION

**(Failure to Respond to Requests for Information and Documents)
(Violation of NASD Rule 8210 and NASD Conduct Rule 2110)**

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.

9. In order to investigate Cruz's failure to disclose the criminal charges in his Form U4, FINRA staff issued six letters to Cruz pursuant to Rule 8210, seeking information and documents. The first four letters, dated September 2, 2008, September 25, 2008, November 4, 2008, and December 10, 2008, were sent by first class and certified mail to Cruz's CRD residential address and to one or more other addresses identified by the staff. These four letters mistakenly cited to "FINRA Rule 8210" rather than "NASD Rule 8210."

10. On September 2, 2008, the staff sent its first Rule 8210 request by first class and certified mail to Cruz's CRD residential address: [REDACTED]
The letter included a response date of September 16, 2008. The first class letter was not returned. The return receipt (green card) attached to the certified letter was signed by "Silvia Alvarez."

11. On September 25, 2008, the staff sent a second Rule 8210 request by first class and certified mail to Cruz's CRD address and to two other potential addresses identified by the staff: [REDACTED] (123rd Dr. address) and [REDACTED]
[REDACTED] (Johnson St. address). The letter included a response date of October 9, 2008. The first class letter sent to the CRD address was not returned. The return receipt attached to the certified letter sent to the CRD address was signed by "Silvia Alvarez." The first class letter sent to the 123rd Dr. address was marked "return to sender," "attempted - not known," and unable to forward." The certified letter sent to the 123rd Dr. address was returned

marked "return to sender," "unclaimed," and "unable to forward." The first class and certified letters sent to the Johnson St. address were returned marked "forward time exp.," "return to sender," and included the following address: [REDACTED] (Buckeye Rd. address).

12. On November 4, 2008, the staff sent a third Rule 8210 request by first class and certified mail to Cruz's CRD address, the 123rd Dr. address, the Johnson St. address, and the Buckeye Rd. address. The letter included a response date of November 18, 2008. The first class letter sent to the CRD address was not returned and the certified letter was returned marked "return to sender," "unclaimed," "unable to forward," and "notify sender of new address: Cruz, [REDACTED] (McDowell Rd. address). The first class letter sent to the 123rd Dr. address was not returned and the certified letter was returned marked "return to sender," "unclaimed," and "unable to forward." The first class and certified letters sent to the Johnson St. address were returned marked "forward time expired," "return to sender," and included the Buckeye Rd. address. The first class and certified letters sent to the Buckeye Rd. address were returned marked "return to sender," "not deliverable as addressed," and "unable to forward."

13. On December 10, 2008, the staff sent a fourth Rule 8210 request by first class and certified mail to Cruz's CRD address, the 123rd Dr. address, the Johnson St. address and the Buckeye Rd. address. The letter included a response date of December 24, 2008. The first class letter sent to the CRD address was not returned. The return receipt attached to the certified letter sent to the CRD address was signed by "Silvia Alvarez," and the delivery address was noted as the McDowell Rd. address. The first class letter sent to the 123rd Dr. address was not returned and the certified letter was returned marked "return to sender," "unclaimed," and "unable to

forward." The first class and certified letters sent to the Johnson St. address were returned marked "forward time expired," "return to sender," and included the Buckeye Rd. address. The first class letter sent to the Buckeye Rd. address was returned marked "return to sender," "not deliverable as addressed," and "unable to forward." The certified letter sent to the Buckeye Rd. address was returned marked "return to sender," "attempted - not known," and "unable to forward."

14. On December 16, 2008, Cruz contacted FINRA staff and provided an updated mailing address [REDACTED] (99th Ave. address)), and telephone number. The staff informed Cruz that he needed to update his CRD information and respond to the Rule 8210 request immediately. Cruz informed the staff that he would respond to the request letter by December 24, 2008.

15. On January 7, 2009, the staff called Cruz concerning his delinquent response to the Rule 8210 requests. Cruz stated that he would overnight his response on January 9, 2009. On January 23, 2009, the staff left a voice mail message for Cruz concerning his failure to respond to the letters. Cruz did not respond to the message.

16. Cruz did not provide information or documents in response to any of the four letters referenced in paragraphs 9 through 13.

17. By reason of the foregoing, Cruz violated NASD Rule 8210 and NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION
(Failure to Respond to Requests for Information)
(Violation of FINRA Rule 8210 and FINRA Conduct Rule 2010)

18. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 17 above.

19. As part of its investigation of Cruz's Form U4 nondisclosure, FINRA staff sent two additional Rule 8210 letters to Cruz. Each of these letters cited to FINRA Rule 8210.

20. On February 6, 2009 (the letter was inadvertently dated February 6, 2008), the staff sent a fifth Rule 8210 request by first class and certified mail to Cruz's CRD address and the address that Cruz represented was his current address, the 99th Ave. Address. The letter included a response date of February 20, 2009. The first class letter sent to Cruz's CRD address was returned marked "return to sender," "vacant" and "unable to forward." The return receipt attached to the certified letter sent to the CRD address was signed by "Pedro Cruz." The first class and certified letters sent to the 99th Ave. address were returned marked "return to sender," "insufficient address," "unable to forward," and with a handwritten notation "apt. #?" The certified letter was returned with the same notations as the first class letter and with a handwritten notation, [REDACTED]

21. On February 12, 2009, the staff left a voice mail message for Cruz in order to obtain a complete current address. Cruz did not respond to the message.

22. On March 2, 2009, the staff sent a sixth and final Rule 8210 request by first class and certified mail to Cruz's CRD address and to the 99th Ave. address, with the addition of apartment number [REDACTED]. The letter included a response date of March 9, 2009. The first class letter sent to the CRD address was not returned and the return receipt attached to the certified letter was signed by "Silvia Alvarez." The first class letter sent to the 99th Ave. address was not returned and the certified letter was returned marked "return to sender," "unclaimed," and "unable to forward."

23. Cruz did not provide information or documents in response to the February 6, 2009 and March 2, 2009 letters.

24. By reason of the foregoing, Cruz violated FINRA Rule 8210 and FINRA Conduct Rule 2010.

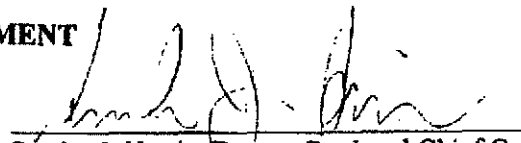
RELIEF REQUESTED

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; 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

Date: April 24, 2009



Sandra J. Harris, Deputy Regional Chief Counsel
Jacqueline D. Whelan, Regional Chief Counsel
FINRA Department of Enforcement
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 613-2601; Fax: (213) 617-1570
sandra.harris@finra.org
jacqueline.whelan@finra.org